Supreme Court, U.S.
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IN THE

Supreme Court of the United States

EDUARD SHLAHTICHMAN, PETITIONER

v.

1 800 CONTACTS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DAVID M. OPPENHEIM
Counsel of Record

Anderson + Wanca
3701 Algonquin Road
Suite 760
Rolling Meadows, IL 60008
doppenheim@andersonwanca.com
847/368-1500

CURRY & TAYLOR • 202-393-4141

QUESTION PRESENTED

I. Did the courts below err in ruling that the consumer protections afforded by the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), 15 U.S.C. § 1681c(g), do not apply to internet transactions?

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Shlahtichman v. 1-800 Contacts, Inc., Case No. 09 CV 4032, 2009 WL 4506535 (N.D. Ill. Dec. 2, 2009)

JURISDICTION

The United States Circuit Court of Appeals issued its Memorandum Order and Judgment on August 10, 2010. This Court therefore has jurisdiction to review the Memorandum Order and Judgment pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 11, 12 and 13.

RELEVANT PROVISIONS INVOLVED

(see appendix)

STATEMENT

Defendant is a corporation that sells contact lenses over the internet. Defendant accepts payment by credit card. On June 2, 2009, while at home, Plaintiff purchased contact lenses over the internet from defendant using his credit card. That same day, Defendant sent by e-mail to Plaintiff, at his home in Lake County Illinois, a computer-generated receipt for his purchase. The receipt included the expiration date for Plaintiff's credit card.

Plaintiff alleges that Defendant violated the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), 15 U.S.C. § 1681c(g), by providing Plaintiff

and its other customers with a credit card receipt that included the expiration date of their credit cards. Doc. 1, Ex. 1.

FACTA was enacted to protect consumers from identity theft. Pub. L. No. 108-159, 117 Stat. 1952 (2003) ("An Act To amend the Fair Credit Reporting Act, to prevent identity theft."). It does this, in part, by prohibiting merchants from including crucial credit card information on receipts. 15 U.S.C. § 1681c(g).

FACTA also was intended to preempt state laws and create a uniform standard for merchants so they would not be subject to disparate and inconsistent state laws. 15 U.S.C. § 1681t(b)(5)(A).

FACTA provided a grace period until January 1, 2005, to allow merchants to comply. 15 U.S.C. § 1681c(g)(3). This grace period was extended to June 3, 2008, for expiration dates. 15 U.S.C. § 1681n. Despite these two grace periods, Defendant continued to include expiration dates on its credit card receipts after June 3, 2008.

REASONS FOR GRANTING THE PETITION

FACTA's credit card receipt truncation provision had two primary purposes. First, it was designed to prevent identity theft. Second, it was designed to create a uniform standard preempting all state laws on the subject. The Seventh Circuit's opinion undermines both purposes. In so doing, it has the potential to cause havoc with internet commerce and thus warrants this Court's review of the issue.

I. The Seventh Circuit's Reading of FACTA Undermines the Consumer Protections the Statute Was Designed to Create.

In 2003 Congress enacted the Fair and Accurate Credit Transactions Act ("FACTA"), Pub. L. 108-59, 117 Stat. 1952, to increase consumer protections against identity theft by including a provision requiring merchants to truncate the information printed on credit card receipts. 15 U.S.C. § 1681c(g). Nowhere in either the text of the statute or the legislative history is there anything to support the notion that Congress wished to exempt internet transactions from these consumer protections.

FACTA states that "(1) In general. Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction. (2) Limitation. This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card." 15 U.S.C. § 1681c(g)(1) and (2). Thus, Congress drafted a broad rule and crafted a narrow exception to it. Nowhere in that exception are internet receipts discussed—only handwritten or imprint receipts.

FACTA is a remedial statute. *See Bateman v. American Multi-Cinema, Inc.*, -- F. 3d --, 2010 WL 3733555, *7 (9th Cir. Sep. 27, 2010) ("we must examine FACTA to determine whether the denial of class

certification is consistent with congressional intent and FACTA's remedial scheme..."). *See also Stillmock v. Weis Markets, Inc.*, Case No. 09-1632, 2010 WL 2621041, *9 (4th Cir. July 1, 2010) ("[t]hat Congress did so highlights the fact that statutory damages serve a compensatory, rather than punitive, function in FACTA's remedial scheme").

As such, its protections should be construed broadly and any defenses or exceptions to it construed narrowly. *See Piedmont & N. Ry. Co. v. Interstate Commerce Comm'n*, 286 U.S. 299, 311-12 (1932) ("The Transportation Act was remedial legislation, and should therefore be given a liberal interpretation; pretation; but for the same reason exemptions from its sweep should be narrowed and limited to effect the remedy intended"); *Atchison, Topeka and Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 561-62 (1987); *United States v. U. S. Gypsum Co.*, 438 U.S. 422, 443 n. 19.

Such a reading would necessitate inclusion of internet receipts—which Congress could have excluded but did not—within FACTA's protections. This is consistent with both the intentions of Congress in crafting a broad consumer protection plan, and common sense. We live in the 21st Century's Digital Age. Every year, more and more of the United States and world economies are made up of online commerce. It makes little sense to apply the broad consumer protections Congress granted in the FACTA statute to face to face transactions but not to e-commerce.

Indeed, such a result makes even less sense when one considers that (1) the receipts generated trough internet transactions are printed on 8.5 by 11 inch

paper and thus present a larger target for dumpster-diving identity thieves; and (2) transmission of credit card information over the internet presents a far greater risk of interception during the transmission itself through electronic hacking than does the physical handing of a piece of paper to a customer.

There is no indication that Congress had any intention of excluding internet receipts from the protections of FACTA. It decided and made clear that handwritten and imprint receipts were excluded and said that, other than those enumerated exclusions, the provisions of FACTA apply to all other receipts. Given the increasingly digitized nature of the economy, the Seventh Circuit's opinion dangerously weakens the consumer protections provided by Congress to participants in that growing sector of the economy.

Internet commerce provides an innovative and efficient way for merchants and customers to transact business, but can function only as long as participants can be confident in the security of their private data. The question is thus of great importance and merits resolution by this Court.

II. The Seventh Circuit's Decision Undermines the Goal of Preempting State Law and Creating a Uniform Standard for Disclosures on Credit Card Receipts, Leaving Behind a Chaotic Hodgepodge of State Law.

The second purpose of FACTA was creating a uniform national standard governing consumer credit transactions. Given that it preempts existing and widely variant state law only to the extent it covers

internet transactions, the Seventh Circuit's holding thwarts this purpose as well. Unless this Court issues a definitive ruling on the subject, paper receipts will be governed by FACTA and internet receipts will be governed by state law. Given that parties to internet transactions are often in different states, if not different countries, the Seventh Circuit's ruling invites a legal chaos in which no seller can be sure if its conduct is unlawful and no buyer can be certain that its credit card data is safe.

In 1996, Congress amended the Fair Credit Reporting Act ("FCRA") to "create a uniform national standard for consumer protection governing credit transactions." H.R. Rep. No. 108-263, at 24 (2003). This was achieved by preempting state laws, but federal preemption was subject to sunset on January 1, 2004. *Id.* One purpose of FACTA was to eliminate the sunset provision and make federal preemption permanent. H.R. REP. No. 108-396, at 56-57 (2003) (Conf. Rep.), *reprinted in* 2003 U.S.C.C.A.N. 1753, 1754; 149 Cong. Rec. H12219 (Nov. 21, 2003) (statement of Rep. Kanjorski) ("If we fail to extend the expiring provisions of the Fair Credit Reporting Act before the end of this year, conflicting state laws could place financial institutions in a difficult compliance position.").

In addition, FACTA was intended to create new protections against identity theft and include these within the uniform national standard. H.R. Rep. No. 108-263, at 26. ("The committee's review of the FCRA's expiring uniform national standards included extensive consideration of proposals for assisting consumers in preventing identity theft."); S. Rep. No. 108-166, at 3 (2003) (Conf. Rep.) ("The bill contains numerous

measures which protect consumers from identity thieves. The legislation requires the truncation of credit and debit card account numbers on electronically printed receipts to prevent criminals from obtaining easy access to such key information.").

One of these new protections was "requiring the truncation of account numbers and expiration dates on credit and debit card receipts." *Id.* This proposal ultimately was codified as 15 U.S.C. 1681c(g) and specifically included in the sections of FCRA preempting state laws. 15 U.S.C. § 1681t(b)(5)(A). "The bill was drafted in this way because identity theft is a national concern, not only because of its impact on our system of granting credit, but because it knows no boundaries." 149 Cong . Rec. H12215 (Nov. 21, 2003) (statement of Rep. Oxley). "[T]he uniform national standards for identity theft were limited to the subject matters that the bill's provisions actually address, such as fraud alerts, blocking bad credit information, and truncating credit card account numbers at the point of sale." *Id.*[1]

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[1] The federal preemptions included in the final version of FACTA were not without controversy. For example, California, which created the first credit card truncation statute, Cal. Civ. Code § 1747.09, opposed preemption. 149 Cong. Rec. S13980 (Nov. 5, 2003) (remarks of Senator Feinstein). As a result, both California Senators voted against FACTA because they believed Californians would have greater protection under existing California statutes. *Id.* Similarly, Representative Sanders from Vermont stated, "[I]n my view, this bill should be defeated. It should be defeated because it preempts States throughout the country from going forward with stronger consumer protection. ... I would point out that virtually every consumer organization in America, the Consumer Federation of America, U.S. Public Interest Research

FACTA amended FCRA's preemption section to state, "No requirement or prohibition may be imposed under the laws of any State -- ... with respect to the conduct required by the specific provisions of – section 1681c(g) of this title." 15 U.S.C. § 1681t(b)(5)(A). If the conduct required by section 1681c(g) applies to receipts issued for internet sales, then state laws that apply to such sales are preempted. If the conduct required by section 1681c(g) does not reach the internet, then the state laws that do reach them remain in force.

It would seem contrary to the goal of a "uniform national standard" to exempt internet sales from preemption. Given the vast growth in on-line sales that pre-dated FACTA's passage in 2003, it would also be contrary to the goal of increasing protections from identity theft.

If Congress had intended such a strange result, it would have said so much more clearly. Instead, Congress used the words "print" and "point" that have multiple and varied meanings. It is plausible to read these words in the context of section 1681c(g) as covering internet sales. The Court should read them this way because it would better achieve the clearly stated purposes of FACTA and avoid the absurd result of leaving internet, but not face-to-face sales, to the vagaries of different state's laws.

Prior to FACTA there was no federal law governing truncation of credit card receipts. On the other hand, many states had passed such laws. *See, e.g.*, Cal. Civ.

Group, et cetera, oppose the preemption aspects of this legislation." 149 Cong. Rec. H12217 (Nov. 21, 2003).

Code § 1747.09; Wash. Rev. Code § 19.200.010; Ariz. Rev. Stat. § 44-1367; La. Rev. Stat. Ann. § 9.3518.3; Colo. Rev. Stat. § 6-1-711; Fla. Stat. § 501.0118; Or. Rev. Stat. § 646A.204; N.M. Stat. § 56-4-3.1; Nev. Rev. Stat. § 597.945; Md. Code Bus. Occ. & Prof. § 14-318; Kan. Stat. Ann. § 50-669b; Mo. Ann. Stat. § 407.433; Neb. Rev. Stat. § 28-633; N.J. Stat. Ann. 56:11-42; N.Y. Gen. Bus. Law § 520-a(4-a); Okla. Stat. tit. 15, § 752A; N.C. Gen. Stat. § 14-113.24; Tex. Bus. & Comm. Code Ann. § 502.002; Del Code Ann tit. 11, § 915a; Ga. Code Ann., § 10-15-3.

As might be expected, the state laws were not uniform. For example, Oregon's statute provides that one may not "create" a receipt that shows "more information about a customer than the customer's name and the last five digits of the customer's credit card." Or. Rev. Stat. § 646A.204(1). On the other hand, the Maryland statute prohibits only more than "eight digits of the credit card number" and allows expiration dates. Md. Code Bus. Oper. & Prof. § 14-318(c).

State legislative activity did not end with the passage of FACTA.[2] For example, Illinois enacted a truncation statute on January 1, 2004. 815 ILCS 505/2NN(b). That Illinois law sets yet a different standard. It prohibits reproducing "any part of the credit card or debit card account number, other than the last 4 digits." *Id.* It also prohibits reproducing the expiration date. *Id.* Finally, any violation is a *per se*

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[2] *See, e.g.*, Me. Rev. Stat. Ann. tit. 10, § 1149; Mich. Comp. Laws § 445.903(ii); R.I. Gen. Laws § 6-30-6; N.D. Cent. Code § 51-07-27; Tenn. Code Ann. § 47-18-126; Alaska Stat. § 45.48.750; S.C. Code Ann. § 16-13-512; Wash. Rev. Code § 19.200.010; Va. Code Ann. § 6.2-429.

violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. 815 ILCS 505/2NN(e).

The Illinois statute, like those of many other states, is drafted broadly so that it clearly applies to internet transactions. It states that a merchant may not "print or otherwise produce or reproduce or permit the printing or production or reproduction of" the prohibited information on "any receipt provided or made available to the cardholder." *Id.* Similarly, New Mexico's statute states that a merchant "shall not issue a receipt that lists more than five numbers from the cardholder's credit card account." N.M. Stat. § 56-4-3.1.

If section 1681c(g) does not apply to internet transactions, then it does not preempt these state laws that do apply. 15 U.S.C. § 1681t(b)(5)(A). Instead, credit card truncation standards would vary depending on which state's law might be applied to any given internet transaction. In the present case, the Illinois statute would apply, and Defendant's inclusion of Plaintiff's expiration date would be a violation of state law.

Given that an internet merchant may not even know to what state it is transmitting a receipt when it clicks "send," it would be a troubling result if the question of whether the merchant's action is unlawful is governed by the law of that state. This Court should grant *certiorari* in order to ensure that Congress's expressed purpose of imposing a uniform national standard is fulfilled and so that online merchants know what they can and cannot do.

CONCLUSION

This is the first case in which a circuit court addressed the issue of whether FACTA's protections and preemption apply to internet receipts. The Seventh Circuit's ruling undermines both purposes behind FACTA, and creates uncertainties on the parts of merchants and consumers alike. The decision leaves consumers unsafe and perhaps unwilling to participate in the online economy, and exposes merchants to liability under varying state laws. For these reasons, *certiorari* is appropriate.

Respectfully submitted,

David M. Oppenheim
Counsel of Record
ANDERSON + WANCA
3701 Algonquin Road, Suite 760
Rolling Meadows, IL 60008
Telephone: 847/368-1500
Attorneys for Petitioner

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No. 09-4073

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

EDUARD SHLAHTICHMAN,
Plaintiff-Appellant,
v.
1-800 CONTACTS, INC., Defendant-Appellee.

April 15, 2010, Argued
August 10, 2010, Decided

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 09 C 4032--John W. Darrah, Judge.

Before BAUER, ROVNER, and HAMILTON, Circuit Judges.

OPINION

ROVNER, *Circuit Judge*. After Eduard Shlahtichman purchased contact lenses over the Internet, 1-800 Contacts, Inc. emailed him a confirmation of his order which reflected the expiration date of his credit card. The Fair and Accurate Credit Transactions Act of 2003 ("FACTA") prohibits a vendor who accepts a credit or debit card as a means of payment from "print[ing] more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction," 15 U.S.C. § 1681c(g)(1); the prohibition "appl[ies] only to receipts that are electronically printed," as opposed to those on which the credit or debit card information is

written by hand or taken by imprint or photocopy, § 1681c(g)(2). Did 1-800 Contacts "electronically print" the expiration date of Shlahtichman's credit card, and thereby violate FACTA, by including it in the email? This is a question of first impression at the appellate level. We answer that question in the negative and affirm the dismissal of Shlahtichman's complaint.

1-800 Contacts sells contact lenses over the Internet and accepts payment by credit card. On or before June 2, 2009, Shlahtichman made an Internet purchase from 1-800 Contacts using his credit card. 1-800 Contacts then sent Shlahtichman a computer-generated email confirming his order. Among the information included in the confirmation was the expiration date of Shlahtichman's credit card. Shlahtichman received the email at his home in Illinois on June 2, 2009. These are the essential factual allegations of Shlahtichman's complaint, and we assume their truth for purposes of reviewing the dismissal of his suit. *E.g.*, *Addis v. Whitburn*, 153 F.3d 836, 837 (7th Cir. 1998).

FACTA amended the Fair Credit Reporting Act of 1970, 15 U.S.C. §§ 1681 et seq. ("FCRA"), to add, among other provisions, a "receipt truncation" requirement aimed at combating identity theft. *See* § 1681c(g). As amended, the statute provides:

> Truncation of credit card and debit card numbers
>
> (1) In general
>
> Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more

> than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.
>
> (2) Limitation
>
> This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.
>
> (3) Effective date
>
> This subsection shall become effective—
>
> (A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and
>
> (B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

§ 1681c(g). The statute permits a consumer to recover any actual damages he sustains as a result of a negligent violation, together with the costs of suit, *see* 15 U.S.C. § 1681o, or statutory damages (without any proof of injury) of $ 100 to $ 1000 per violation, along with the costs of suit, if the violation of the statute was willful, *see* 15 U.S.C. § 1681n(a)(1)(A), (3).[1]

Shlahtichman filed a class action suit in Illinois state court on behalf of himself and others similarly situated, contending that 1-800 Contacts had violated the FCRA as amended by FACTA by including the expiration date of a purchaser's credit card in the order confirmations it sent by email. Because the suit arises under a federal statute, 1-800 Contacts removed the action to the district court. *See* 28 U.S.C. §§ 1331, 1441, 1446. It then moved to dismiss Shlahtichman's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief could be granted.

The district court granted the motion and dismissed the suit. *Shlahtichman v. 1-800 Contacts, Inc.*, No. 09 C 4032, 2009 U.S. Dist. LEXIS 112379, 2009 WL 4506535 (N.D. Ill. Dec. 2, 2009); R.26, 28. The court cited two principal reasons for concluding that an emailed order confirmation falls outside the scope of the statute. "*First*, e-mail order confirmations are not 'electronically printed' receipts under FACTA." 2009 U.S. Dist. LEXIS 112379, [WL] at *2 (emphasis ours). Noting that the statute leaves the term "printed" undefined, the court adopted the plain and ordinary meaning of the term, which signifies the transfer of text, images, designs, and other information to paper. 2009 U.S. Dist. LEXIS 112379, [WL] at *3. It rejected Shlahtichman's contention that the term should also be taken to include the display of information on a computer screen, reasoning that even if the word "print" can be understood in this way, this is not its ordinary import. *Id.* The fact that the effective date of the truncating provision turned on the date on which the vendor's "cash register or other machine or device that electronically prints receipts" came into use confirmed

that the provision should be understood to reach receipts that are printed on paper by cash registers and similar devices. 2009 U.S. Dist. LEXIS 112379, [WL] at *4. And the legislative history revealed that it was the misappropriation of those kinds of receipts that Congress was concerned about when it passed FACTA. *Id.* "*Second*, an e-mail order confirmation is not provided at the point of the sale or transaction' under FACTA." 2009 U.S. Dist. LEXIS 112379, [WL] at *2 (emphasis ours). As other courts had observed, the statutory reference to receipts provided at "the point of the sale or transaction" contemplates in-store transactions rather than electronic commerce. 2009 U.S. Dist. LEXIS 112379, [WL] at *5. Even if a point of sale can be ascribed to an Internet purchase--Shlahtichman argued that the computer used by the consumer to make the purchase represents the point of sale--an email sent to the purchaser to confirm that purchase is not provided at that point but rather is directed to an email account that can be accessed anywhere. *Id.*

Although Shlahtichman brought this case as a class action, no class was ever certified (no motion asking the district court to do so was filed), so the dismissal of the complaint only disposes of Shlahtichman's individual claim for relief. *See, e.g., Phillips v. Ford Motor Co.*, 435 F.3d 785, 787 (7th Cir. 2006). Nonetheless, the district court made clear that it contemplated no further proceedings in this case, *see* R. 26 (deeming the case closed), so its judgment is final and our own appellate jurisdiction is secure. *See, e.g., McClain v. Retail Food Employers Joint Pension Plan*, 413 F.3d 582, 585 n.2 (7th Cir. 2005). Consistent with the fact that no class was certified, we shall treat Shlahtichman's complaint

as if it were filed solely on his own behalf. *Rutan v. Republican Party of Ill.*, 868 F.2d 943, 947 (7th Cir. 1989) (en banc), *aff'd in part & rev'd in part on other grounds*, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990).

Our review of the district court's decision is de novo. *E.g.*, *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 434 (7th Cir. 2009). The viability of Shlahtichman's complaint turns on the meaning of FACTA's terms--in particular, the term "print." Absent a definition supplied by the statute itself, we look to the ordinary or natural meaning of the term. *FDIC v. Meyer*, 510 U.S. 471, 476, 114 S. Ct. 996, 1001, 127 L. Ed. 2d 308 (1994) (citing *Smith v. United States*, 508 U.S. 223, 228, 113 S. Ct. 2050, 2054, 124 L. Ed. 2d 138 (1993)); *see also Hardt v. Reliance Std. Life Ins. Co.*, 130 S. Ct. 2149, 2156, 176 L. Ed. 2d 998 (2010). But we must also look to the statute as a whole in discerning a term's meaning rather than examining it in isolation. *Samantar v. Yousuf*, 130 S. Ct. 2278, 2289, 176 L. Ed. 2d 1047 (2010) (quoting *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769, 2773, 81 L. Ed. 2d 680 (1984)); *Nken v. Holder*, 129 S. Ct. 1749, 1756, 173 L. Ed. 2d 550 (2009) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 846, 136 L. Ed. 2d 808 (1997)). "[W]hen the statute's language is plain, the sole function of the courts--at least where the disposition required by the text is not absurd--is to enforce it according to its terms." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023, 1030, 157 L. Ed. 2d 1024 (2004) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S. Ct. 1942, 1947, 147 L. Ed. 2d 1 (2000)).

As the district court noted, most courts have concluded that the term "electronically printed" reaches only those receipts that are printed on paper, as that understanding of the statute conforms to the ordinary meaning of the term "print." *See Turner v. Ticket Animal, LLC*, No. 08-61038-CIV, 2009 U.S. Dist. LEXIS 32246, 2009 WL 1035241 (S.D. Fla. Apr. 16, 2009); *Smith v. Under Armour, Inc.*, 593 F. Supp. 2d 1281 (S.D. Fla. 2008); *Smith v. Zazzle.com, Inc.*, 589 F. Supp. 2d 1345, 1348 (S.D. Fla. 2008); *Grabein v. Jupiterimages Corp.*, No. 07-22288-CIV, 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451 (S.D. Fla. Jul. 7, 2008) (report and recommendation of magistrate judge), *adopted*, 2008 U.S. Dist. LEXIS 59512, 2008 WL 2906866 (S.D. Fla. Jul. 28, 2008); *King v. Movietickets.com, Inc.*, 555 F. Supp. 2d 1339, 1340 (S.D. Fla. 2008); *Haslam v. Federated Dep't Stores, Inc.*, No. 07-61871 CIV, 2008 U.S. Dist. LEXIS 68903, 2008 WL 5574762 (S.D. Fla. May 16, 2008); *Narson v. GoDaddy.com, Inc.*, No. CV-08-0177, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211 (D. Ariz. May 5, 2008). A minority have concluded that the term should be understood to reach electronic receipts that are displayed on the consumer's computer. *Romano v. Active Network, Inc.*, No. 09 C 1905, 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838 (N.D. Ill. Sept. 3, 2009); *Harris v. Best Buy Co.*, 254 F.R.D. 82, 86-87 (N.D. Ill. 2008); *Grabein v. 1-800-Flowers.com, Inc.*, No. 07-22235-CIV, 2008 U.S. Dist. LEXIS 11757, 2008 WL 343179 (S.D. Fla. Jan. 29, 2008); *Vasquez-Torres v. Stubhub, Inc.*, No. CV 07-1328, 2007 U.S. Dist. LEXIS 63719 (C.D. Cal. Jul. 2, 2007).[2] We conclude that the majority view adopted by the district court in this case is on firmer ground.

What FACTA covers are *printed* receipts. The same technological advances that have given consumers multiple means of paying their bills and purchasing goods and services have also made it possible for the receipts confirming those transactions to be provided in the form of a voicemail, email, and text message as well as the traditional paper receipt. But when one refers to a printed receipt, what springs to mind is a tangible document. To "print" a receipt thus ordinarily connotes recording it on paper. "That is why [the plaintiff] had to *print* a copy of his receipt to get it off of his computer; it is why the machine used to transfer text from a computer to paper is called a *printer*; and it is why a judge who asks a law clerk to *print* a case does not intend for the clerk to merely display the case on his computer screen." *Jupiterimages*, 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451, at *8 (emphasis in original).

Dictionaries are a helpful resource in ascertaining the common meaning of terms that a statute leaves undefined, *see, e.g., Crawford v. Metro. Gov't of Nashville & Davidson County, Tenn.*, 129 S. Ct. 846, 850, 172 L. Ed. 2d 650 (2009), and a canvass of several leading dictionaries reveals that "print" in its transitive verb form ordinarily connotes the transfer of words or images to a tangible medium--often paper. *See* OXFORD ENGLISH DICTIONARY ONLINE, available at http://english.oxforddictionaries.com (last visited Aug. 5, 2010) ("produce (books, newspapers, magazines, etc.), especially in large quantities, by a mechanical process involving the transfer of text, images, or designs to paper: *a thousand copies of the book were printed*"); MERRIAM-WEBSTER DICTIONARY ONLINE, available at http://merriam-

webster.com/dictionary (last visited Aug. 5, 2010) ("a: to impress something in or on b: to stamp (as a mark) in or on something"); DICTIONARY.COM, available at http://dictionary.reference.com (last visited Aug. 5, 2010) ("to produce (a text, picture, etc.) by applying inked types, plates, blocks, or the like, to paper or other material either by direct pressure or indirectly by offsetting an image onto an intermediate roller") (citing Random House Dictionary). True enough, these sources recognize that the term, when used with reference to computers, also can be understood to mean the display of text on a computer's viewing screen. MERRIAM-WEBSTER DICTIONARY ONLINE ("PRINT OUT; *also*: to display on a surface (as a computer screen) for viewing"); DICTIONARY.COM ("*Computers.* to produce (data) in legible alphanumeric or graphic form"). For that matter, one can also "print to file" and "print to PDF" (portable document format) in a computer environment without transferring anything to paper. *See* OXFORD ENGLISH DICTIONARY ONLINE ("send (a computer file) to a printer or to another, temporary file"). But these usages of the term, while more frequent in recent years, do not yet represent the ordinary or natural meaning of "print." Shlahtichman suggests that use of the adverb "electronically" in section 1681c(g)(2) ("[t]his subsection shall apply only to receipts that are *electronically printed* . . .") (emphasis ours) evinces a congressional intent to broaden the meaning of the statutory term to include the more modern usages, so that an "electronically printed" receipt will include one that is opened and displayed on the consumer's computer. Yet, the modifier "electronically" appears intended to distinguish those receipts that are printed by machine, as opposed to those which are handwritten or created

by taking an impression of the card using an imprinter. *See* Active Network, 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838, at *3. In any case, whatever sort of printing that the consumer might do on his or her computer is not printing done by a "person that accepts credit cards or debit cards for the transaction of business," § 1681c(g)(1); and it is printing by the vendor, rather than by the consumer, at which the statute is aimed. *Movietickets.com*, 555 F. Supp. 2d at 1341-42; *GoDaddy.com*, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *3. An email generated by the vendor might never be viewed or displayed by the consumer and thus might never be printed even in the expansive sense that Shlahtichman advocates. This leaves Shlahtichman to argue that the vendor "prints" a receipt simply by *sending* the email to the consumer. Shlahtichman Reply at 17-18. But that too is a departure from the ordinary or natural meaning of the term.

Ultimately, "[s]tatutory language only has meaning in context," *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 415, 125 S. Ct. 2444, 2449, 162 L. Ed. 2d 390 (2005), and the overall statutory context of FACTA suggests, consistent with the ordinary meaning of the word "print," that the statute is aimed at paper receipts. The statute's ban on printing more than the last five digits of a debit or credit card or the expiration date of the card applies to receipts that are printed and "provided to the cardholder *at the point of the sale or transaction.*" § 1681c(g)(1) (emphasis ours). This language has a ready application to face-to-face transactions that take place in a "bricks-and-mortar" store or some comparable physical location at which the consumer is handed a receipt. *See GoDaddy.com*, 2008

U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *5. Its application to Internet purchases raises a host of questions. Where is the point of sale for such a purchase--the consumer's computer? the vendor's headquarters? the vendor's server? cyberspace generally? And is that the *same* point at which an emailed receipt is provided to the consumer? Assuming that these questions can be answered in a way that comports with the statutory language, *see Ehrheart v. Bose Corp.*, Civ. A. No. 07-350, 2008 U.S. Dist. LEXIS 752, 2008 WL 64491, at *4-*6 (W.D. Pa. Jan. 4, 2008) (on premise that "point of sale or transaction" has no fixed meaning and can refer to a time or event rather than a location, court eschews an understanding of the term as used in FACTA that would refer to a particular physical site), a separate subsection of section 1681c(g) points again to traditional, in-store transactions. In subsection 1681c(g)(3), Congress specified two different effective dates for the truncation requirement: December 4, 2006, "with respect to any *cash register or other machine or device* that electronically prints receipts for credit card or debit card transactions *that is in use before January 1, 2005*," and December 4, 2004 with respect to any such machine or device "*that is first put into use on or after January 1, 2005.*" (Emphasis ours.) The citation of the cash register as the lead example of a machine or device used to electronically print a receipt is consistent with the notion that Congress meant to regulate the types of receipts that document in-person transactions between the consumer and the merchant; few terms bring to mind a store better than "cash register." On the other hand, scores of businesses use the same sorts of computers to generate and print receipts that consumers now possess in their homes, and technological advances are fast blurring the

line between traditional cash registers and consumer-owned devices that can perform the same functions. *See, e.g.*, Erick Schonfeld, *Square Turns Your iPad Into A Cash Register*, TECH CRUNCH (Apr. 3, 2010), available at http://techcrunch.com/2010/04/03/square-ipad/ (last visited Aug. 5, 2010). More telling, perhaps, is that Congress chose to make the effective date of the truncation requirement dependent on the vintage of the device used to print the receipt. *See GoDaddy.com*, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *5; *Federated Dep't Stores*, 2008 U.S. Dist. LEXIS 68903, 2008 WL 5574762, at *4. If the statute applies to only those receipts that are printed on paper by a vendor using a cash register or similar device, then the two different effective dates comprised a workable scheme. If, however, the statute reaches not only those receipts that are printed by the vendor in the traditional way, but also those that are emailed to the consumer and displayed on the device of her choosing (personal computer, smartphone, etc.), then with respect to the latter subset of receipts, Congress made the effective date of the truncation requirement dependent on a fact (the date the device was first put into use) that was wholly beyond the contemplation and control of the vendor facing liability. Of course, that is water under the bridge now that the later effective date has passed, but it is implausible to think that Congress would have premised a vendor's liability on circumstances that were entirely beyond its control. In short, "[t]he language of § 1681c(g) as a whole clearly shows that the statute contemplates transactions where receipts are physically printed using electronic point of sale devices like electronic cash registers or dial-up terminals." *GoDaddy.com*, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *6; *see also Ticket Animal*, 2009 U.S. Dist.

LEXIS 32246, 2009 WL 1035241, at *3 ("the terms 'point of the sale' and 'any cash register or other machine or device' immediately evoke the image of a paper receipt"); *Under Armour*, 593 F. Supp. 2d at 1287 (same); *Zazzle.com*, 589 F. Supp. 2d at 1348 (same).

The statutory language strikes us as significant not only for the terms that it uses but for those it does not. E-commerce was common by 2003; retail sales via the Internet reached $ 56 billion in the United States that year. U.S. Dep't of Commerce, E-Stats: *E-Commerce 2003 Highlights*, at 4 (May 11, 2005), available at http://www.census.gov/econ/estats/2003/2003finaltext.pdf (last visited Aug. 5, 2010). Yet the statute makes no use of terms like "Internet" or "email" that would signal an intent to reach paperless receipts transmitted to the consumer via email. Elsewhere, Congress has made explicit that it is including electronic media and transactions within the scope of a statute. *See, e.g.*, 15 U.S.C. § 1278(c)(1)(A) (Consumer Product Safety Improvement Act of 2008) ("Any advertisement by a retailer, manufacturer, importer, distributor, or private labeler (*including advertisements on Internet websites* or in catalogues or other printed materials) that provides a direct means for the purchase or order of a product for which a cautionary statement is required under subsection (a) or (b) shall include the appropriate cautionary statement displayed on or immediately adjacent to that advertisement . . . .") (emphasis ours); 15 U.S.C. §§ 7701, et seq. (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003) (recognizing that "[e]lectronic mail has become an extremely popular and important means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes" and

"offer[s] unique opportunities for the development and growth of frictionless commerce," § 7701(a)(1), and proceeding to set forth series of requirements aimed at unsolicited commercial electronic mail or "spam"); 18 U.S.C. § 2343(e)(1) (Contraband Cigarette Trafficking Act of 1978, as amended by 2006 renewal of Patriot Act) (defining "delivery sale" of cigarettes or smokeless tobacco, as to which certain information must be maintained as required by U.S. Attorney General, to include sale in which "the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, *or the Internet or other online service,* or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made") (emphasis ours); 28 U.S.C. § 1920(2) (Judicial Administration and Technical Amendments Act of 2008) (including within taxable costs of litigation "[f]ees for printed *or electronically recorded* transcripts necessarily obtained for use in the case") (emphasis ours); 42 U.S.C. § 2000aa-7 (Privacy Protection Act of 1980) (defining "documentary materials" gathered in course of federal investigation, as to which statute sets forth certain privacy protections, to include "materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, mag[ne]tically, *or electronically recorded* cards, tapes, or discs . . .") (emphasis ours). In view of such statutory provisions, it is reasonable to expect that Congress would have used similar terminology had it meant to reach electronic receipts viewed or printed by the consumer. Under Armour, 593 F. Supp. 2d at 1287.

We recognize that section 1681c(g) was one of several provisions in FACTA that were enacted to combat identity theft. *See* Pub. L. 108-159, 117 Stat. 1952 (Dec. 4, 2003) (describing FACTA as "[a]n [a]ct [t]o amend the Fair Credit Reporting Act, *to prevent identity theft*, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes") (emphasis ours). Applying FACTA's truncation requirements to electronic as well as printed receipts would no doubt be consistent with that purpose, *Active Network*, 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838, at *2; *Best Buy*, 254 F.R.D. at 87; *1-800-Flowers*, 2008 U.S. Dist. LEXIS 11757, 2008 WL 343179, at *3; *StubHub*, 2007 U.S. Dist. LEXIS 63719, at *8-*9, although as we note below, there are other statutes that address the integrity of electronic communications. But we may not ignore the unambiguous language of the statute in order to further Congress's expressed purpose in enacting the statute. *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869, 2886, 177 L. Ed. 2d 535 (2010) ("It is our function to give the statute the effect its language suggests, however modest that may be; not to extend it to admirable purposes it might be used to achieve."); *see also, e.g.*, *Carr v. United States*, 130 S. Ct. 2229, 2241, 176 L. Ed. 2d 1152 (2010) (citing *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 261, 113 S. Ct. 2063, 2071, 124 L. Ed. 2d 161(1993)). Both the language and context of the truncation requirement make plain that Congress was regulating only those receipts physically printed by the vendor at the point of the sale or transaction; to apply the statute to receipts that are emailed to the consumer would broaden the statute's reach beyond the words that Congress actually used.[3]

Our construction of the statute does not produce absurd results. Although electronic receipts may also be misappropriated by identity thieves, one might reasonably believe that paper receipts pose unique, if not greater, dangers in that regard. A paper receipt produced at the point of sale or transaction may be dropped, mislaid, or discarded by the consumer in any number of public places where it easily can be retrieved and put to nefarious use by others. An electronic receipt, by contrast, to the extent it is viewed on the consumer's own computer or other digital device at a time and place of his choosing (including his home or office), is arguably less subject to inadvertent disclosure and theft. *Under Armour*, 593 F. Supp. 2d at 1288. To be sure, there may be someone looking over the consumer's shoulder when he views an email in a public place, and emails and other electronic data can be accessed without authorization ("hacked") at both the consumer's and the vendor's end of things. *See, e.g., Active Network*, 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838, at *2. But Congress might have thought that the misappropriation of electronic data was better addressed by other statutory provisions that specifically deal with the privacy and misuse of such data. *See, e.g.*, 18 U.S.C. § 1028(c)(3)(A) (Identity Theft and Deterrence Act of 1998, as amended by Internet False Identification Prevention At of 2000) (criminalizing the knowing production, transfer, possession, use, or sale of stolen or forged identification documents in or affecting interstate or foreign commerce, "including the transfer of a document by electronic means"); 18 U.S.C. § 1030(a)(4) (Computer Fraud and Abuse Act of 1986) (criminalizing the unauthorized access of a computer owned by government or financial institution, or which is used in

interstate or foreign commerce, with intent to defraud); 18 U.S.C. § 2511(1)(a) (Electronic Communications Privacy Act of 1986) (criminalizing unauthorized interception of electronic communications); 18 U.S.C. §§ 2701, 2707 (Stored Communications Act, enacted as part of Electronic Communications Privacy Act of 1986) (authorizing suit for damages by victim of unauthorized, intentional access to communications held in electronic storage).

Shlahtichman makes a belated argument that construing the truncation provision not to apply to email receipts is inconsistent with the FCRA's preemption provision, 15 U.S.C. § 1681t(b). That provision forecloses regulation by the States of any conduct regulated by the individual provisions of the statute, including the truncation provision. *See* § 1681t(b)(5)(A). Shlahtichman reasons that if email receipts are not covered by the federal statute, then States will be free to impose their own truncation requirements on email receipts, producing the very crazy quilt of State laws that FCRA's preemption provision was meant to avoid. But Shlahtichman forfeited this argument by failing to make it in the district court, *e.g.*, *Ocean Atlantic Dev. Corp. v. Aurora Christian Schools, Inc.*, 322 F.3d 983, 1005 (7th Cir. 2003), and this is not one of the rare civil cases in which we might overlook the forfeiture, *see Russian Media Group, LLC v. Cable Am., Inc.*, 598 F.3d 302, 308 (7th Cir. 2010).

We note finally that even if we have construed the statute too narrowly, dismissal of Shlahtichman's complaint was nevertheless appropriate because 1-800 Contacts did not willfully violate the statute.

Shlahtichman has alleged no actual injury, *see* § 1681o(a)(1), and has instead sought the statutory damages that are authorized for willful violations of the truncation requirement, *see* § 1681n(a)(1)(A). Like this court, 1-800 Contacts has construed the truncation requirement not to apply to email receipts. To date, there has been no contrary opinion from a court of appeals or federal agency suggesting that the company's understanding of the statute is wrong; and even if its construction of the statute turns out to be mistaken, it is objectively reasonable nonetheless for all of the reasons we have discussed. Consequently, if 1-800 Contacts did violate the statute by including the expiration date of Shlahtichman's credit card in the receipt it emailed to him, it did not do so knowingly or recklessly. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69-70, 127 S. Ct. 2201, 2215-16, 167 L. Ed. 2d 1045 & n.20 (2007); *Levine v. World Fin. Network Nat'l Bank*, 554 F.3d 1314, 1319 (11th Cir. 2009) ("*Safeco* makes clear that evidence of subjective bad faith cannot support 'a willfulness finding . . . when the company's reading of the statute is objectively reasonable' "); , 555 F. Supp. 2d at 1342-43.

For all of these reasons, we AFFIRM the district court's judgment.

Footnotes

1The Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110-241, 122 Stat. 1565 (enacted June 3, 2008), provided a (partial) safe harbor to vendors who merely printed the expiration date of a consumer's credit or debit card on a receipt prior to June 3, 2008, by declaring that this limited violation of

the statute would not amount to a willful violation of the statute. *See* § 1681n(d). However, 1-800 Contacts emailed the receipt to Shlahtichman after June 3, 2008, and so the safe harbor is inapplicable to this case.

2An Internet merchant, in addition to or in lieu of sending the consumer a receipt or confirmation via email, may generate a receipt on its website at the time of the transaction, which the consumer may (and is often encouraged to) print out for her records. *See, e.g.*, *Under Armour*, 593 F. Supp. 2d at 1282. We do not view as material the distinctions between a receipt that is displayed on the merchant's website and one that is emailed to the consumer for purposes of the issue presented in this case.

3We need not explore FACTA's legislative history in view of the unambiguous terms of the statute. *E.g.*, *Boyle v. United States*, 129 S. Ct. 2237, 2246-47, 173 L. Ed. 2d 1265 (2009). We do, however, note that neither party in this case nor any court addressing the reach of section 1681c(g)(1) has cited any legislative history that conflicts with our understanding of the statute.

09 CV 4032

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

EDUARD SHLAHTICHMAN, Plaintiff,

v.

1-800 CONTACTS, INC., Defendant.

December 2, 2009, Decided
December 2, 2009, Filed

JOHN W. DARRAH, United States District Court Judge.

MEMORANDUM OPINION AND ORDER

This case arises out of alleged violations of 15 U.S.C. § 1681c(g) of the Fair and Accurate Credit Transactions Act ("FACTA"). This case comes before the Court on the Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons stated below, the Motion to Dismiss is granted.

BACKGROUND

The following facts are alleged in the Complaint. Defendant 1-800 CONTACTS ("Defendant") is a corporation that sells contact lenses and related items over the internet. On June 2, 2009, Plaintiff, Eduard Shlahtichman, used his credit card to purchase contact

lenses over the internet from Defendant. On that same day, Plaintiff received at his home a computer-generated receipt, which displayed the expiration date of the Plaintiff's credit card in response to his internet purchase from Defendant.

On July 6, 2009, Plaintiff notified the Court that his state-court complaint, seeking statutory damages for a "willful" violation of 15 U.S.C. § 1681c(g) of FACTA, had been removed to federal court pursuant to 28 U.S.C. § 1441(a). On August 14, 2009, Defendant moved to dismiss the Complaint.

LEGAL STANDARD

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint." *Christensen v. County of Boone, Ill.*, 483 F.3d 454, 458 (7th Cir. 2007). Under the federal notice pleading standards, "a plaintiff's complaint need only provide a short and plain statement of the claim showing that the pleader is entitled to relief, sufficient to provide the defendant with fair notice of the claim and its basis." *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008) (internal quotations omitted). When considering a motion to dismiss under Rule 12(b)(6), the complaint is construed in the light most favorable to the plaintiff; all well-pleaded factual allegations are accepted as true, and all reasonable inferences are construed in the plaintiff's favor. *Id.* However, a complaint must allege "enough facts to state a claim to relief that is plausible on its face" to survive a motion to dismiss. *Bell Atlantic Corp. v Twombly*, 550 U.S. 544, 547, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). For a claim to have facial plausibility, a plaintiff must plead "factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, U.S. , 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (*Iqbal*). Thus, "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S. Ct. at 1949. Further, the amount of factual allegations required to state a plausible claim for relief depends on the complexity of the legal theory alleged. *Limestone Dev. Corp. v. Village of Lemont*, 520 F.3d 797, 803 (7th Cir. 2008). Additionally, determining whether a complaint should survive a motion to dismiss is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 129 S. Ct. at 1950. To survive a motion to dismiss, the well-pleaded facts of the complaint must allow the court to infer more than the mere possibility of misconduct. *Id.*

ANALYSIS

Plaintiff's claim fails because e-mail order confirmations are not entitled to FACTA protection. In 2003, Congress amended the Fair Credit Reporting Act by passing the Fair and Accurate Credit Transactions Act. FACTA imposes regulations that either demand or forbid the disclosure of consumers' credit information in specific circumstances. *See* 15 U.S.C. § 1681c. The subsection of FACTA at issue in the instant case imposes a limitation upon the disclosure of credit and debit card information by those who accept the cards for business transactions. *See* 15 U.S.C. § 1681c(g). The applicable portion of FACTA reads, in full:

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date

This subsection shall become effective-

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

§ 1681c(g). In short, the subsection prohibits the electronic printing of receipts that contain more than the last five digits of a consumer's credit or debit card number or the expiration date of the credit or debit card.

Defendant argues that Plaintiff's claim fails because the e-mail confirmation is not covered by FACTA. Specifically, Defendant asserts that (1) an e-mail confirmation is not an "electronically printed" receipt under FACTA, and (2) e-mail confirmations are not provided "at the point of the sale or transaction" as understood under FACTA. Alternatively, Defendant argues that even if the Court concludes that FACTA applies to the instant case, Defendant is still not liable for statutory penalties because Defendant's conduct was not a "willful" violation of the statute. [1]

E-mail order confirmations are not entitled to FACTA protection for the following reasons. First, e-mail order confirmations are not "electronically printed" receipts under FACTA. Second, an e-mail order confirmation is not provided "at the point of the sale or transaction" under FACTA. Because Defendant did not violate FACTA, there is no need to consider whether Defendant's behavior was "willful." Accordingly, the Motion to Dismiss is granted.

An E-mail Order Confirmation Is Not an "Electronically Printed" Receipt Under FACTA

Most decisions which reach the question of whether an e-mail order confirmation is an "electronically printed" receipt entitled to FACTA protection have held that e-mail confirmations are not printed receipts under

FACTA. *See Turner v. Ticket Animal, LLC*, 2009 U.S. Dist. LEXIS 32246, 2009 WL 1035241, at *3 (S.D. Fla. 2009) (holding that an e-mail order confirmation is not a printed receipt under FACTA); *Smith v. Zazzle.com, Inc.*, 589 F. Supp. 2d 1345, 1348 (S.D. Fla. 2008) (holding that "the plain meaning of the unambiguous term 'print' establishes that the Plaintiff does not have a cause of action under FACTA for [an] internet receipt"); *Smith v. Under Armour, Inc.*, 593 F. Supp. 2d 1281, 1287 (S.D. Fla. 2008) (holding that the plain meaning of "print" does not coincide with "display on a computer screen"); *Grabein v. Jupiterimages*, 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451, at *8 (S.D. Fla. 2008) (*Jupiterimages*) (holding that "print" under FACTA only refers to a "tangible, paper receipt"); *King v. Movietickets.com, Inc.*, 555 F. Supp. 2d 1339, 1340 (S.D. Fla. 2008) (holding that e-mail receipts are not printed within the meaning of FACTA); *Haslam v. Federated Dept. Stores, Inc.*, 2008 U.S. Dist. LEXIS 6890[illegible] 2008 WL 5574762, at *4 (S.D. Fla. 2008) (holding that "the word 'print' commonly refers to a tangible, paper receipt and not an on-screen computer display"); *Narson v. Godaddy.com, Inc.*, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *5 (D. Ariz. 2008) (*Narson*) (holding that FACTA covers "tangible, paper receipts" but not "displays on a consumer's computer screen").

However, a minority of decisions have held that e-mail order confirmations are printed receipts under FACTA. *See Romano v. Active Network Inc.*, 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838 (N.D. Ill. 2009) (*Romano*) (holding that a computer display is included within the term "electronically printed" under FACTA); *Grabein v. 1-800-Flowers.com, Inc.*, 2008 U.S. Dist.

LEXIS 11757, 2008 WL 343179 (S.D. Fla. 2008) (holding that "the ordinary meaning of the term 'print' encompasses the information included when a seller electronically transmits a receipt"); *Vasquez-Torres v. Stubhub, Inc.*, 2007 U.S. Dist. LEXIS 63719, at *7 (C.D. Cal. 2007) (holding that "the display of information on the plaintiff's computer screen" is electronically printed under FACTA). [2]

The decisions referenced above, holding a computer screen display is not an "electronically printed" receipt under FACTA, generally find that the term "print" is not commonly understood to apply to a display on a computer screen and that the statutory context of FACTA supports the proposition that Congress intended "print" to be interpreted in accord with this plain meaning.

As set out above, FACTA expressly limits the scope of its truncation requirement to "electronically printed" receipts provided to the consumer. § 1681c(g)(2). However, FACTA does not define the term "printed." In the absence of a statutory definition, a court should use a term's plain meaning. *United States v. Davis*, 471 F.3d 783, 787 (7th Cir. 2006). Moreover, courts "frequently look to dictionaries to determine the plain meaning of words." *Sanders v. Jackson*, 209 F.3d 998, 1000 (7th Cir. 2000). The first definition of "print" in the Oxford Dictionary of English is to "produce (books, newspapers, magazines, etc.) . . . by a mechanical process involving the transfer of text, images, or designs to paper." OXFORD DICTIONARY OF ENGLISH, (11th ed. 2008), http://www.oed.com/. Several other dictionaries confirm that the plain meaning of "print" is to transfer information to paper.

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2006), http://education.yahoo.com/reference/dictionary/entry/print; COLLINS ESSENTIAL ENGLISH DICTIONARY, (2d ed. 2006), http://www.thefreedictionary.com/print; WEBSTER'S NEW WORLD COLLEGE DICTIONARY, (4th ed. 2004), http://www.yourdictionary.com/print. Although Plaintiff posits that "print" is commonly understood to mean "to display on a surface (as a computer screen) for viewing," this argument is unpersuasive. In rejecting an identical argument, one court noted that this particular definition is an alternate sub-definition meant to be associated with the verb "print out." *Jupiterimages*, 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451, at *6. Plaintiff's argument is unpersuasive; "print" is not commonly understood as a display on a computer screen. [3] *Id.*

Moreover, the statutory context of FACTA supports this plain meaning of "print." Other provisions of FACTA's truncation requirement confirm the above-mentioned plain meaning of "print." Significantly, FACTA's effective dates turn on the date that "any cash register or other machine or device that prints receipts for credit card or debit card transactions" is put into use. § 1681c(g)(3). Under the statutory interpretation rule of *ejusdem generis*, when a statute sets out a specific term and a general term, the general term is confined to covering subjects comparable to the specifics it follows. *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 128 S. Ct. 1396, 1404, 170 L. Ed. 2d 254 (2008).

Plaintiff contends that because the statute contains the phase "any . . . other machine or device that prints

receipts," it is intended to include computers sending e-mail. However, the term "other machine or device" as used in FACTA must be understood as a reference to devices akin to cash registers. *Narson*, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *6. Accordingly, FACTA would apply to point-of-sale terminals or dial-up terminals. E-mail servers or home computers, however, are not sufficiently "akin to" cash registers to receive protection under FACTA.

Plaintiff further argues that because FACTA elsewhere in § 1681c(g)(2) set out above specifically excludes only "transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card," no other exceptions should be inferred. Plaintiff relies on *Romano*, where the court concluded that this exclusion of receipts prepared by hand or by imprints meant that FACTA applied to all other types of receipts. 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838, at *3. However, this exclusion simply clarifies that FACTA covers only "electronically printed" paper receipts. Although receipts prepared by hand or by imprints are printed, they are not done so electronically. Thus, the exception does not show that FACTA applies to more than printed paper receipts. Rather, it shows that FACTA was not intended to cover all printed paper receipts.

Finally, the legislative history indicates that FACTA was directed at printed, paper receipts. In his Complaint, Plaintiff concedes that Congress enacted FACTA to curb "low tech" means of identity theft. Plaintiff provides "dumpster diving" as an example of a low tech means of identity theft. "Dumpster divers" obtain stolen, lost, or discarded receipts and use the

information on the receipts in transactions. Moreover, remarks from Congress demonstrate how FACTA is intended to protect information on paper receipts. *The Fair Credit Reporting Act and Issues Presented By Reauthorization of the Expiring Preemption Provisions, Before the Comm. on Banking, Housing and Urban Affairs*, 108th Cong., 78 (2003) ("In other words, the receipt, the part you discard, does not show the whole number on there so people cannot go into the garbage can, pick it up, and duplicate your credit card number.") (statement of Sen. Charles Schumer). In support of his proposition that FACTA reaches computer displays, Plaintiff cites two committee reports, which recognize that the internet can facilitate identity theft. SEN. REP. NO. 108-166 (2003); H.R. CON. REP. No. 108-396 (2003), *reprinted in* 1990 U.S.C.C.A.N. 1753. However, this fact alone is not enough to infer that Congress intended FACTA to reach computer displays.

In May 2008, Congress passed the "Clarification Act" to rescue merchants that had included expiration dates on receipts from civil FACTA liability. Although the Clarification Act does not apply to the instant case because Plaintiff challenges later-issued receipts, Plaintiff argues that the absence of any recitals or clarifications regarding the applicability of FACTA to internet transactions shows that FACTA was understood to apply to internet transactions. This argument is also unpersuasive, as the legislative history regarding the Clarification Act confirms FACTA's exclusive focus on paper receipts. 154 CONG. REC. H00000-29 (daily ed. May 13, 2008) (FACTA "eliminates one avenue for these criminals to steal account numbers by prohibiting the printing of full

account numbers on *paper* receipts.") (statement of Rep. Melissa Bean) (emphasis added). Indeed, if Congress intended for FACTA to apply to internet transactions, it would have made a reference to e-mail order confirmations or internet commerce.

Therefore, Plaintiff's e-mail order confirmation is not an "electronically printed" receipt entitled to protection from FACTA.

An E-mail Order Confirmation Is Not Provided "at the Point of the Sale of Transaction" Under FACTA

In addition to not being a printed receipt under FACTA, an e-mail order confirmation is not entitled to FACTA protection because it is not provided "at the point of the sale or transaction." Section 1681c(g)(1) specifies that the receipts entitled to FACTA protection must be "provided to the cardholder at the point of the sale or transaction." In *Narson*, the court noted that "this language clearly contemplates a transaction where the customer is present in the location where the sale is made, and where the merchant provides the receipt to the customer at that same location." 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *5. Moreover, the *Jupiterimages* court held that the language of § 1681c(g) as a whole clearly shows that the statute contemplates in-store transactions. 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451, at *7. Specifically, the court stated that, when "[c]onsidered in context, the word 'print' must apply to tangible, paper receipts. There is no tangible 'point of sale or transaction' with respect to e-commerce; but the 'point of sale or transaction' clause makes sense in the context of printed paper receipts." *Id.*

Plaintiff contends that the transaction at issue is covered by FACTA because the physical place where the transaction occurred is wherever consumers make an on-line purchase. The authority upon which Plaintiff bases this assertion comes from distinguishable case law involving intellectual property and therefore does not provide meaningful assistance in the interpretation of terms used in FACTA. *See Gen. Motors Corp. v. Keystone Auto. Indus.*, 453 F.3d 351 (6th Cir. 2006); *Interactive Gift Express, Inc.*, 256 F.3d 1323, 1333 (Fed. Cir. 2001). Additionally, an e-mail order confirmation is not provided to a consumer at the point of purchase even if a consumer purchases an item and views the e-mail order confirmation on the same computer. Rather, e-mails are provided to an account, which can be accessed anywhere in the world. The fact that a consumer can view an e-mail on his home computer does not mean the e-mail was directed to that computer at that location. Thus, Plaintiff's e-mail order confirmation is not entitled to FACTA protection because it was not provided "at the point of sale or transaction."

The allegations set forth in the Complaint are not sufficient to survive a motion to dismiss. In sum, FACTA does not protect electronically displayed e-mail order confirmations because these e mail confirmations are not "electronically printed." Moreover, these e-mail order confirmations are not provided "at the point of sale or transaction." Thus, Plaintiff's Complaint fails to state a cognizable claim.

CONCLUSION

For the reasons stated above, Defendants' Motion to Dismiss Plaintiff's Complaint is granted.

Date: December 2, 2009

/s/ John W. Darrah

JOHN W. DARRAH
United States District Court Judge

Footnotes

1 It is proper to adjudicate this case at the 12(b)6 stage because the character and content of the e-mail confirmation at issue is clearly established. Although Plaintiff cites *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012, 2007 WL 3046162, at *3 (N.D. Ill. 2007) (*Harris*), to support its contention that the issue of whether an e-mail confirmation is an "electronically printed" receipt is premature, *Harris* is distinguishable from the instant case. There, the defendant merely asserted the characteristics of the alleged "receipt" as a fact. (2007 U.S. Dist. LEXIS 76012, [WL] at *1.) Here, Defendant has provided a template, which demonstrates the form of the confirmation e-mail, which Plaintiff does not contest. Indeed, the vast majority of courts presented with this issue on a motion to dismiss have reached the merits of that issue. *See Romano v. Active Network Inc.*, 2009 U.S. Dist. LEXIS 78983, 2009 WL 2916838, at *1 (N.D. Ill. 2009); *Turner v. Ticket Animal, LLC*, 2009 U.S. Dist. LEXIS 32246, 2009 WL 1035241, at *3 (S.D. Fla. 2009); *Smith v. Zazzle.com, Inc.*, 589 F. Supp. 2d 1345, 1348 (S.D. Fla. 2008); *Smith v. Under Armour, Inc.*, 593 F. Supp. 2d 1281, 1287 (S.D. Fla. 2008); *Grabein v.*

Jupiterimages, 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451, at *8 (S.D. Fla. 2008); *King v. Movietickets.com, Inc.*, 555 F. Supp. 2d 1339, 1340 (S.D. Fla. 2008); *Haslam v. Federated Dept. Stores, Inc.*, 2008 U.S. Dist. LEXIS 68903, 2008 WL 5574762, at *4 (S.D. Fla. 2008); *Narson v. Godaddy.com, Inc.*, 2008 U.S. Dist. LEXIS 108047, 2008 WL 2790211, at *5 (D. Ariz. 2008); *Grabein v. 1-800-Flowers.com, Inc.*, 2008 U.S. Dist. LEXIS 11757, 2008 WL 343179 (S.D. Fla. 2008); *Vasquez-Torres v. Stubhub, Inc.*, 2007 U.S. Dist. LEXIS 63719, at *7 (C.D. Cal. 2007).

2 As Defendant points out in its reply brief, the minority of cases that extend FACTA to electronically displayed information generally presumes that Congress must have intended for FACTA to address the privacy risk of e-mail, That presumption is unfounded. At the time that FACTA was passed, there existed numerous statutes protecting e-mail and electronic documents. For example, interception of e-mail is punishable by up to five years imprisonment. *See* 18 U.S.C. § 2511(1)(a), (4)(a). Unauthorized access of a computer used in interstate commerce with the intent to defraud is punishable by five years' imprisonment for a first offense and ten years for a second or subsequent offense. 18 U.S.C. § 1030(a)(4), (c)(3). Moreover, unauthorized access to electronic communications stored by a facility providing electronic communications services has been criminalized. *See* 18 U.S.C. § 2701.

3 As Judge Torres noted:

> "In sum, the word 'print' does not encompass onscreen computer displays because 'print' only

> refers to a tangible, paper receipt. That is why Mr. Grabein had to *print* a copy of his receipt to get it off of his computer; it is why the machine used to transfer text from a computer to paper is called a *printer;* and it is why a judge who asks a law clerk to *print* a case does not intend for the clerk to merely display the case on his computer screen."

Jupiterimages, 2008 U.S. Dist. LEXIS 65828, 2008 WL 2704451, at *8 (emphasis in original).

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter III. Credit Reporting Agencies (Refs & Annos)

§ 1681c. Requirements relating to information contained in consumer reports

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date

This subsection shall become effective--

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005;

and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter III. Credit Reporting Agencies (Refs & Annos)

§ 1681n. Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of--

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a

consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(d) Clarification of willful noncompliance

For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and June 3, 2008, but otherwise complied with the requirements of section 1681c(g) of this title for such receipt shall not be in willful noncompliance with section 1681c(g) of this title by reason of printing such expiration date on the receipt.

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter III. Credit Reporting Agencies (Refs & Annos)

15 U.S.C. → § 1681t. Relation to State laws

(b) General exceptions

(5) with respect to the conduct required by the specific provisions of--

(A) section 1681c(g) of this title;

815 ILCS Chapter 815. Business Transactions
Deceptive Practices
Act 505. Consumer Fraud and Deceptive Business Practices Act (Refs & Annos)
505/2NN. Receipts; credit card and debit card account numbers

§ 2NN. Receipts; credit card and debit card account numbers.

(b) Except as otherwise provided in this Section, no provider may print or otherwise produce or reproduce or permit the printing or other production or reproduction of the following: (i) any part of the credit card or debit card account number, other than the last 4 digits or other characters, (ii) the credit card or debit card expiration date on any receipt provided or made available to the cardholder.

West's Alaska Statutes Annotated Currentness
Title 45. Trade and Commerce
Chapter 48. Personal Information Protection Act (Refs & Annos)
Article 6. Truncation of Card Information

§ 45.48.750. Truncation of card information

(a) A person who accepts credit cards or debit cards for the transaction of business may not print more than the last four digits of the card number or the expiration date on any receipt or other physical record of the transaction provided at the point of the sale or transaction.

(b) This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(c) A person may not sell a device that electronically prints more than the last four digits of a credit card or debit card number or expiration date on a consumer receipt for a business transaction or on a copy retained by a business person for a business transaction.

(d) An individual may bring a civil action in court against a person who knowingly violates (a) of this section and may recover actual economic damages, court costs allowed by the rules of court, and full reasonable attorney fees.

(e) A person who knowingly violates this section is liable to the state for a civil penalty not to exceed $3,000.

(f) In this section,

(1) "credit" means the right granted by a creditor to a debtor to defer payment of debt, to incur debts and defer payment of the debt, or to purchase property or services and defer payment of the purchase; in this paragraph, "creditor" means a person who regularly extends, renews, or continues credit, a person who regularly arranges for the extension, renewal, or continuation of credit, or an assignee of an original creditor who participates in the decision to extend, renew, or continue credit;

(2) "credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit;

(3) "debit card" means a card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at the financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(4) "knowingly" has the meaning given in AS 11.81.900.

Arizona Revised Statutes Annotated Currentness
Title 44. Trade and Commerce
Chapter 9. Trade Practices Generally (Refs & Annos)
Article 14. Credit Card Transaction Receipts (Refs & Annos)

§ 44-1367. Credit card transaction receipts; applicability; enforcement; definition

A. Except as provided in subsection B of this section, a person who enters into a contract for the purpose of providing that person or another person with the means of accepting payment by credit card in exchange for goods or services shall not allow to be printed more than the last five digits of the credit card account number or the credit card expiration date on a credit card receipt provided to the cardholder.

B. This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

C. Any violation of this article is an unlawful act or practice pursuant to § 44-1522. The attorney general may investigate the act or practice and take appropriate action pursuant to chapter 10, article 7 of this title.

D. This section is effective from and after:

1. June 30, 2002 for any person described in subsection A of this section who begins accepting payment by credit card in exchange for goods or services on or after

July 1, 2002.

2. June 30, 2004 for any person described in subsection A of this section who began accepting payment by credit card in exchange for goods or services on or before June 30, 2002.

E. For the purposes of this section "credit card" has the same meaning prescribed in § 13-2101.

West's Annotated California Codes Currentness
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 1.3. Credit Cards (Refs & Annos)

§ 1747.09. Printing credit or debit card receipts; restrictions

(a) Except as provided in this section, no person, firm, partnership, association, corporation, or limited liability company that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the credit or debit card account number or the expiration date upon any of the following:

(1) Any receipt provided to the cardholder.

(2) Any receipt retained by the person, firm, partnership, association, corporation, or limited liability company, which is printed at the time of the purchase, exchange, refund, or return, and is signed by the cardholder.

(3) Any receipt retained by the person, firm, partnership, association, corporation, or limited liability company, which is printed at the time of the purchase, exchange, refund, or return, but is not signed by the cardholder, because the cardholder used a personal identification number to complete the transaction.

(b) This section shall apply only to receipts that include a credit or debit card account number that are electronically printed and shall not apply to transactions in which the sole means of recording the

person's credit or debit card account number is by handwriting or by an imprint or copy of the credit or debit card.

(c) This section shall not apply to documents, other than the receipts described in paragraphs (1) to (3), inclusive, of subdivision (a), used for internal administrative purposes.

(d) Paragraphs (2) and (3) of subdivision (a) shall become operative on January 1, 2009.

West's Colorado Revised Statutes Annotated Currentness

Title 6. Consumer and Commercial Affairs (Refs & Annos)

Fair Trade and Restraint of Trade

Article 1. Colorado Consumer Protection Act (Refs & Annos)

Part 7. Specific Provisions (Refs & Annos)

§ 6-1-711. Restrictions on credit card receipts--legislative declaration--application--definitions

(1) The general assembly hereby finds, determines, and declares that credit, particularly the use of credit cards, is an important tool for consumers in today's economy. Unscrupulous persons often fraudulently use the credit card accounts of others by stealing the credit card itself or obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's credit card account. The general assembly, therefore, finds, determines, and declares that protection from unauthorized use of credit card accounts is necessary.

(2) No person that accepts credit cards for the transaction of business shall print more than the last five digits of the credit card account number or print the credit card expiration date, or both, on a credit card receipt.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(4) For the purposes of this section, "credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit; those cards pursuant to which unpaid balances are payable upon demand; and any card or device used to withdraw moneys from a bank account.

(5)(a) Except as provided in paragraph (c) of this subsection (5), this section shall apply to any entity formed on and after April 25, 2002, that uses a cash register or any other machine or device that electronically imprints receipts on credit card transactions and is placed into service on or after April 25, 2002.

(b) Except as provided in paragraph (c) of this subsection (5), on and after January 1, 2004, this section shall apply to any cash register and any other machine or device that electronically imprints receipts on credit card transactions for entities that were formed on or before April 25, 2002.

(c) On and after January 1, 2005, this section shall apply to:

(I) Institutions of higher education; and

(II) Persons who employ no more than twenty-five employees or who have generated no more than five million dollars annually in revenues from the person's business activities.

West's Delaware Code Annotated Currentness
Title 11. Crimes and Criminal Procedure
Part I. Delaware Criminal Code
Chapter 5. Specific Offenses
Subchapter III. Offenses Involving Property
Subpart I. Other Frauds and Cheats

§ 915A. Credit and debit card transaction receipts; unclassified misdemeanor

(a) Except as provided in subsection (b) of this section, a person who accepts credit or debit cards in exchange for goods or services shall print not more than 5 digits of that credit or debit card account number on the credit or debit card receipt provided to the cardholder.

West's Florida Statutes Annotated Currentness
Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations (Chapters 494-560)
Chapter 501. Consumer Protection (Refs & Annos)
Part I. General Provisions (Refs & Annos)

501.0118. Restrictions on information printed on receipts for payment-card transactions; penalties

(1) As used in this section, the term:

(a) "Cardholder" means the person or organization named on the face of a payment card to whom or for whose benefit the payment card is issued.

(b) "Merchant" means a person who receives from a cardholder a payment card, or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(c) "Payment card" means a credit card, charge card, debit card, or any other card that is issued to a cardholder and that allows the cardholder to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

(2) A merchant who accepts a payment card for the transaction of business may not print more than the last five digits of the payment card's account number or print the payment card's expiration date on a receipt provided to the cardholder. This subsection applies only to receipts described in subsection (3) and does not apply to a transaction in which the sole means of recording the payment card's account number or

expiration date is by handwriting or by an imprint or copy of the payment card.

(3)(a) Effective July 1, 2003, this section applies to receipts that are electronically printed using a cash register or other machine or device that is first used on or after July 1, 2003.

(b) Effective July 1, 2005, this section applies to all receipts that are electronically printed, including those printed using a cash register or other machine or device that is first used before July 1, 2003.

(4) A merchant who violates this section commits a noncriminal violation as defined in s. 775.08, punishable by a fine of $250 for the first violation and $1,000 for a second or subsequent violation in accordance with s. 775.083.

(5) The office of the state attorney may bring an action to enforce this section for each violation that occurs in or affects the judicial circuit under the office's jurisdiction. The appropriate county court has jurisdiction.

West's Code of Georgia Annotated Currentness
Title 10. Commerce and Trade
Chapter 15. Business Administration

§ 10-15-3. Requirements for merchants accepting payment cards

(a) A merchant who accepts a payment card for the transaction of business shall not print more than five digits of the payment card's account number or print the payment card's expiration date on a receipt provided to the cardholder. This subsection applies only to receipts described in subsection (b) of this Code section and does not apply to a transaction in which the sole means of recording the payment card's account number or expiration date is by handwriting or by an imprint or copy of the payment card.

(b)(1) Effective July 1, 2004, subsection (a) of this Code section applies to receipts that are electronically transferred by a payment card processor and printed using a cash register or other machine or device that is first used on or after July 1, 2004.

(2) Effective July 1, 2006, subsection (a) of this Code section applies to all receipts that are electronically transferred by a payment card processor and printed, including those printed using a cash register or other machine or device that is first used before July 1, 2004.

West's Kansas Statutes Annotated Currentness
Chapter 50. Unfair Trade and Consumer Protection
Article 6. Consumer Protection
Credit Card Information

50-669b. Prohibiting printing of credit card or debit card account numbers on receipts

(a) No supplier which accepts credit cards or debit cards shall print more than the last five digits of the credit card or debit card account number or print the credit card or debit card expiration date on a credit card or debit card receipt issued to the cardholder.

(b) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card or debit card number is by handwriting or by an imprint or copy of the credit card or debit card.

(c) This section applies on July 1, 2003, to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions and is placed into service on or after July 1, 2003, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions and is placed into service prior to July 1, 2003.

(d) Violation of this section shall be deemed an unconscionable act as defined by K.S.A. 50-627, and amendments thereto.

(e) This section shall be part of and supplemental to the Kansas consumer protection act.

West's Louisiana Statutes Annotated Currentness
Louisiana Revised Statutes
Title 9. Civil Code Ancillaries
Code Book III. Of the Different Modes of Acquiring the Ownership of Things
Code Title XII. Of Loan
Chapter 2. Louisiana Consumer Credit Law (Refs & Annos)
Part I. General Provisions and Definitions (Refs & Annos)

§ 3518.3. Credit cards; printing of accounting numbers on sales receipts; liability

A. As used in this Section, the following terms shall have the following meanings:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer and shall include any employee or other agent or authorized user of the card.

(2) "Credit card" means any instrument or device, whether known as a credit card, credit plate, bank service card, bank card, check guarantee card, debit card, or by any other name, including an account number, issued with or without fee by an issuer for the use of a cardholder in obtaining money, goods, services, or anything else of value or for use in an automated banking device to obtain any of the services offered through the device.

(3) "Issuer" means the financial institution or other business organization which issues a credit card or its duly authorized agent.

(4) "Person" means an individual or corporation, partnership, trust association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other legal entity.

(5) "Provider" means a person who furnishes money, goods, services, or anything else of value upon presentation, whether physically, in writing, verbally, electronically, or otherwise of a credit card by the cardholder, or any agent or employee of such person.

B. Except as otherwise provided in this Section, no provider shall print or otherwise produce or reproduce, or permit the printing or other production or reproduction of either of the following:

(1) Any part of the credit card account number, other than the last five digits or other characters on any receipt provided or made available to the cardholder.

(2) The credit card expiration date on any receipt provided or made available to the cardholder.

C. (1) This Section shall not apply to a credit card transaction in which the sole means available to the provider of recording the credit card account number is by handwriting or by imprint of the card.

(2) This Section shall not apply to receipts issued for transactions on the electronic benefits transfer card system in accordance with 7CFR 274.12(g)(3).

D. Any provider who violates the provisions of this Section shall be liable to the cardholder and the issuer for any damages or expenses, or both, including

attorney fees, which the cardholder or issuer incurs due to the use of the cardholder's credit card without the permission of the cardholder.

E. (1) The provisions of this Section shall become operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use prior to January 1, 2002.

(2) The provisions of this Section shall become operative on January 1, 2002, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2002.

West's Annotated Code of Maryland Currentness
Business Occupations and Professions
Title 14. Professional Engineers (Refs & Annos)
Subtitle 3. Licensing (Refs & Annos)

§ 14-318. Commencement of proceedings by Board

In general

(a) Subject to the provisions of this section, the Board shall commence proceedings under § 14-317 of this subtitle on a complaint made to the Board by a member or any other person.

Form and contents of complaint

(b)(1) A complaint shall:

(i) be in writing;

(ii) state specifically the facts on which the complaint is based; and

(iii) be submitted to the secretary of the Board.

(2) If the complaint is made by any person other than a member of the Board, the complaint shall be made under oath by the person who submits the complaint.

Action on complaint

(c) If the Board finds that a complaint alleges facts that are adequate grounds for action under § 14-317 of this subtitle, the Board shall act on the complaint as provided under § 14-319 of this subtitle. If the Board

does not make that finding, it shall dismiss the complaint.

Maine Revised Statutes Annotated Currentness
Title 10. Commerce and Trade
Part 3. Regulation of Trade (Refs & Annos)
Chapter 202-D. Credit Card and Debit Card Receipts (Refs & Annos)

§ 1149. Electronically printed credit card and debit card receipts

1. Electronically printed receipts. Except as provided in this section, a person, firm, partnership, association, corporation or limited liability company that accepts credit cards or debit cards for the transaction of business may not print more than the last 5 digits of the credit card or debit card account number or the expiration date of the credit card or debit card on a receipt provided to a cardholder at the point of sale of the transaction.

2. Exception. This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the cardholder's credit card or debit card account number is by handwriting or by an imprint or copy of the credit card or debit card.

3. Forfeiture; civil penalty. A person, firm, partnership, association, corporation or limited liability company that violates this section is subject to a forfeiture not to exceed $250 for the first violation and a civil penalty of $1,000 for each subsequent violation. A forfeiture or civil penalty may not be assessed for a violation of this section if the person, firm, partnership, association, corporation or limited liability company demonstrates by a preponderance of the evidence that the defendant has adopted procedures reasonably

designed to avoid errors and that the violation was unintentional and resulted from a bona fide error.

3-A. Absolved from forfeiture and civil penalty. Until January 1, 2005, a person who violates this section is absolved from civil prosecution or forfeitures and civil penalties associated with any such violation occurring before that date.

4. Effective date. This section takes effect January 1, 2004.

Michigan Compiled Laws Annotated Currentness
Chapter 445. Trade and Commerce
Michigan Consumer Protection Act (Refs & Annos)

445.903. Unfair, unconscionable, or deceptive methods, acts, or practices; rules

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

***

(ii) If a credit card or debit card is used for payment in a consumer transaction, issuing or delivering a receipt to the consumer that displays any part of the expiration date of the card or more than the last 4 digits of the consumer's account number. This subdivision does not apply if the only receipt issued in a consumer transaction is a credit card or debit card receipt on which the account number or expiration date is handwritten, mechanically imprinted, or photocopied. This subdivision applies to any consumer transaction that occurs on or after March 1, 2005, except that if a credit or debit card receipt is printed in a consumer transaction by an electronic device, this subdivision applies to any consumer transaction that occurs using that device only after 1 of the following dates, as applicable:

(*i*) If the electronic device is placed in service after March 1, 2005, July 1, 2005 or the date the device is placed in service, whichever is later.

(*ii*) If the electronic device is in service on or before March 1, 2005, July 1, 2006.

Vernon's Annotated Missouri Statutes Currentness
Title XXVI. Trade and Commerce (Refs & Annos)
Chapter 407. Merchandising Practices (Refs & Annos)
Credit Cards--Unlawful Practices

407.433. Unlawful credit card practices--disclosing account number, accessing encoded information, use of reencoder--authorized means of recording account number

1. No person, other than the cardholder, shall:

(1) Disclose more than the last five digits of a credit card or debit card account number on any sales receipt provided to the cardholder for merchandise sold in this state;

(2) Use a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a credit or debit card without the permission of the cardholder and with the intent to defraud any person, the issuer, or a merchant; or

(3) Use a reencoder to place information encoded on the magnetic strip or stripe of a credit or debit card onto the magnetic strip or stripe of a different card without the permission of the cardholder from which the information is being reencoded and with the intent to defraud any person, the issuer, or a merchant.

2. Any person who knowingly violates this section is guilty of an infraction and any second or subsequent violation of this section is a class A misdemeanor.

3. It shall not be a violation of subdivision (1) of subsection 1 of this section if:

(1) The sole means of recording the credit card number or debit card number is by handwriting or, prior to January 1, 2005, by an imprint of the credit card or debit card; and

(2) For handwritten or imprinted copies of credit card or debit card receipts, only the merchant's copy of the receipt lists more than the last five digits of the account number.

4. This section shall become effective on January 1, 2003, and applies to any cash register or other machine or device that prints or imprints receipts of credit card or debit card transactions and which is placed into service on or after January 1, 2003. Any cash register or other machine or device that prints or imprints receipts on credit card or debit card transactions and which is placed in service prior to January 1, 2003, shall be subject to the provisions of this section on or after January 1, 2005.

West's North Carolina General Statutes Annotated Currentness

Chapter 14. Criminal Law

Subchapter V. Offenses Against Property

Article 19C. Identity Theft (Refs & Annos)

§ 14-113.24. Credit, charge, or debit card numbers on receipts

(a) For purposes of this section, the word "person" means the person that owns or leases the cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions.

(b) Except as provided in this section, no person that accepts credit, charge, or debit cards for the transaction of business shall print more than five digits of the credit, charge, or debit card account number or the expiration date upon any receipt with the intent to provide the receipt to the cardholder at the point of sale. This section applies to a person who employs a cash register or other machine or device that electronically prints receipts for credit, charge, or debit card transactions. This section does not apply to a person whose sole means of recording a credit, charge, or debit card number for the transaction of business is by handwriting or by an imprint or copy of the credit, charge, or debit card.

(c) A person who violates this section commits an infraction as defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars ($500.00) per violation, not to exceed five hundred dollars ($500.00) in any calendar month or two thousand dollars ($2,000) in any calendar year. A person who receives a citation for violation of this section is not subject to the penalty

provided in this subsection if the person establishes in court that the person came into compliance with this section within 30 days of the issuance of the citation and the person has remained in compliance with this section.

West's North Dakota Century Code Annotated Currentness

Title 51. Sales and Exchanges

Chapter 51-07. Miscellaneous Provisions

§ 51-07-27. Restrictions on electronically printed credit card receipts--Penalty

Except as otherwise provided under this section, a person that accepts credit cards for the transaction of business and also electronically prints receipts for these credit card transactions may not print on the receipt provided to the customer more than the last five digits of the credit card account number nor print on the receipt provided to the customer the expiration date of the credit card. This section does not apply to a credit card transaction in which the sole means of recording the customer's credit card number is by handwriting or by an imprint or copy of the credit card. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use after December 31, 2003. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use before January 1, 2004. A person who violates this section is guilty of a class B misdemeanor.

New Jersey Statutes Annotated Currentness

Title 56. Trade Names, Trade-Marks and Unfair Trade Practices

Chapter 11. Consumer Credit Transactions (Refs & Annos)

56:11-42. Prohibition against printing credit card information on sales receipts

No retail sales establishment shall print electronically more than the last five digits of a customer's credit card account number or the expiration date of that credit card upon any sales receipt provided at the point of sale to the customer, except that the provisions of this section shall not apply to any sales receipt in which the sole means of recording the customer's credit card number is by handwriting or by an imprint or copy of the credit card.

West's New Mexico Statutes Annotated Currentness
Chapter 56. Commercial Instruments and Transactions
Article 4. Credit Cards (Refs & Annos)

§ 56-4-3.1. Prohibited disclosure of credit card number

A person who accepts a credit card from a cardholder shall not issue a receipt that lists more than five numbers from the cardholder's credit card account number.

Mckinney's Consolidated Laws of New York Annotated Currentness

General Business Law (Refs & Annos)

Chapter 20. Of the Consolidated Laws

Article 29-A. Unauthorized or Improper Use of Credit Cards and Debit Cards (Refs & Annos)

§ 520-a. Certain credit and debit card transaction forms required

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4-a. a. No person, firm, partnership, association, limited liability company, corporation, or other entity that accepts charge, credit, or debit cards for the transaction of business shall print the expiration date of the charge, credit, or debit card nor shall any person, firm, corporation, partnership, association, limited liability company, or other entity print more than the last five digits of the charge, credit, or debit card account number upon any receipt provided to the card holder.

West's Revised Statutes of Nebraska Annotated Currentness

Chapter 28. Crimes and Punishments

Article 6. Offenses Involving Fraud

28-633. Payment cards; prohibited acts; violation; penalty

(1) A person that accepts a payment card for the transaction of business shall print no more than the last five digits of the payment card account number upon any receipt provided to the payment card holder.

(2) This section applies only to receipts that are electronically printed and does not apply to any transaction in which the only means of recording the payment card number is by handwriting or by an imprint or copy of the payment card.

(3) A violation of this section is a Class III misdemeanor for the first offense and a Class I misdemeanor for a second or subsequent offense.

(4)(a) This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for payment card transactions and that is originally put into use on or after January 1, 2004.

(b) This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for payment card transactions and that is originally put into use before January 1, 2004.

West's Nevada Revised Statutes Annotated Currentness

Title 52. Trade Regulations and Practices (Chapters 597-604B)

Chapter 597. Miscellaneous Trade Regulations and Prohibited Acts (Refs & Annos)

Miscellaneous Provisions

597.945. Restrictions on printing expiration date or account number of credit card or debit card on receipt

1. Except as otherwise provided in this section, if a business accepts credit cards or debit cards for the transaction of business, the business shall not:

(a) Print the expiration date of the credit card or debit card on any receipt provided to the cardholder;

(b) Print more than the last five digits of the account number of the credit card or debit card on any receipt provided to the cardholder; or

(c) Print more than the last five digits of the account number of the credit card or debit card on any copy of a receipt retained by the business.

2. This section:

(a) Applies only to receipts that are electronically printed.

(b) Does not apply to transactions in which the only means of recording the credit card or debit card number is:

(1) By handwriting the credit card or debit card number; or

(2) By imprinting or copying the credit card or debit card.

3. A business that violates any provision of this section is liable for a civil penalty in the amount of $500. The business must be given notice of the violation and 2 weeks to correct the violation. A business that does not correct the violation within 2 weeks after receiving notice of the violation is liable for an additional civil penalty in the amount of $1,000 per week until the business corrects the violation, except that the aggregate amount of civil penalties imposed on a business for violations which occur on the same premises must not exceed $4,500.

4. A civil penalty imposed pursuant to subsection 3 must be recovered in a civil action brought in the name of the State of Nevada by the Attorney General or by any district attorney in a court of competent jurisdiction. Any penalty collected pursuant to this section must be paid to the State Treasurer for credit to the State General Fund.

5. The Attorney General or the district attorney may bring an action in any court of competent jurisdiction in the name of the State of Nevada against any business to restrain and prevent any violation of this section. The court may issue an injunction for those purposes without proof of actual damage sustained by any person.

6. A business that violates any order or injunction

issued pursuant to this section is guilty of a gross misdemeanor.

7. As used in this section:

(a) "Credit card" means any instrument or device, whether known as a credit card, credit plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit.

(b) "Debit card" means any instrument or device, whether known as a debit card or by any other name, that is issued with or without a fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value, subject to the issuer removing money from the checking account or savings account of the cardholder.

Oklahoma Statutes Annotated Currentness
Title 15. Contracts
Chapter 20. Consumer Protection (Refs & Annos)
Consumer Protection Act

§ 752A. Credit card receipts--Restrictions on printing certain account information--Operative dates of section

A. Except as otherwise provided in this section, a person who accepts credit cards or debit cards for a consumer transaction shall not print more than the last five digits of the account number or the expiration date upon any receipt provided to the cardholder.

B. This section applies only to receipts that are printed electronically and does not apply to transactions in which the sole means of recording the credit card or debit card number is by handwriting or by an imprint or copy of the card.

C. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for consumer transactions that is first put into use on or after January 1, 2004.

D. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for consumer transactions that is in use before January 1, 2004.

West's Oregon Revised Statutes Annotated
Currentness
Title 50. Trade Regulations and Practices
Chapter 646A. Trade Regulation
Credit and Purchasing
(Credit and Debit Card Receipts)

646A.204. Customer information permitted on customer receipt

(1) In a credit or debit card transaction with a customer, a person may not create a customer receipt that shows more information about a customer than the customer's name and five digits of the customer's credit or debit card number.

(2) A person that creates or retains a copy of a receipt containing more information about a customer than the customer's name and five digits of the customer's credit or debit card number shall shred, incinerate or otherwise destroy the copy on or before the sooner of:

(a) The date the image of the copy is transferred onto microfilm or microfiche; or

(b) Thirty-six months after the date of the transaction that created the copy.

West's General Laws of Rhode Island Annotated Currentness

Title 6. Commercial Law--General Regulatory Provisions

Chapter 30. Distribution of Credit Cards

§ 6-30-6. Credit card transactions--Printing of accounting numbers on receipts

(a) As used in this section, the following terms shall have the following meanings:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer and shall include any employee or other agent or authorized user of the card;

(2) "Credit card" shall be defined as stated in § 6-30-2;

(3) "Issuer" means the financial institution or other business organization which issues a credit card or its duly authorized agent;

(4) "Person" means an individual or corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other legal entity; and

(5) "Provider" means a person who furnishes money, goods, services, or anything else of value upon presentation, whether physically, in writing, verbally, electronically or otherwise of a credit card by the cardholder, or any agent or employee of such person.

(b) Except as otherwise provided in this section, no

provider shall print or otherwise produce or reproduce, or permit the printing or other production or reproduction of either of the following:

(1) Any part of the credit card account number, other than the last five (5) digits or other characters on any receipt provided or made available to the cardholder; or

(2) The credit card expiration date on any receipt provided or made available to the cardholder.

(c) This section shall not apply to a credit card transaction in which the sole means available to the provider of recording the credit card account number is by handwriting or by imprint of the card.

(d) This section shall not apply to receipts issued for transactions on the electronic benefits transfer card system.

(e) Any cardholder, whose credit card has been the subject of a violation of this section, or the issuer of such a card, may bring a civil action in the superior court against the provider who violated the provisions of this section to recover or obtain one or all of the following remedies:

(1) Damages or expenses, or both, which the cardholder or issuer incurred due to the provider's violation of this section;

(2) Court costs, including reasonable attorneys' fees;

(3) Injunctive or equitable relief, as appropriate; and

(4) Any other relief the court deems proper.

(f) The provisions of this section shall become effective on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use prior to January 1, 2005.

(g) The provisions of this section shall become effective on January 1, 2005, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2005.

Code of Laws of South Carolina 1976 Annotated Currentness

Title 16. Crimes and Offenses

Chapter 13. Forgery, Larceny, Embezzlement, False Pretenses and Cheats

Article 2. Personal Financial Security Act

§ 16-13-512. Printing credit and debit card numbers on sales receipts; exceptions; penalties.

(A) Except as provided in this section, a person, firm, partnership, association, corporation, limited liability company, or any other entity which accepts credit cards or debit cards for the transaction of business must not print on a receipt provided to the cardholder at the point of sale:

(1) more than five digits of the credit card or debit card account number; and

(2) the expiration date of the credit card or debit card.

(B) This section does not apply to transactions in which the sole means of recording the cardholder's credit card or debit card account number is by handwriting or by an imprint or copy of the credit card or debit card.

(C)(1) A person that violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars for the first violation and one thousand dollars for each subsequent violation.

(2) A person that knowingly and wilfully violates the provisions of this section is guilty of a Class F felony

and, upon conviction, must be imprisoned not more than five years and fined not more than one thousand dollars, or both.

(D) This section, in compliance with Public Law 108-159, Section 113 of Title 1, is effective:

(1) three years after its enactment as to a cash register or other machine or device that electronically prints receipts for credit card or debit card transactions and that is in use before January 1, 2005; or

(2) one year after its enactment for those machines and devices first put into use on or after January 1, 2005.

West's Tennessee Code Annotated Currentness
Title 47. Commercial Instruments and Transactions
Chapter 18. Consumer Protection (Refs & Annos)
Part 1. Consumer Protection Act of 1977 (Refs & Annos)

§ 47-18-126. Printing of card number or expiration date on electronically printed receipt

(a) Except as otherwise provided in subsection (b), no person that accepts credit cards or debit cards for the transaction of business shall print or cause to be printed more than five (5) digits of the card number or the expiration date upon either the receipt retained by the merchant or the receipt provided to the cardholder at the point of the sale or transaction.

(b) This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(c) A violation of this section is an unfair and deceptive trade practice and punished as provided in this part.

(d)(1) Effective May 13, 2005, the provisions of this section shall apply to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was first put into use on or after January 1, 2005.

(2) Effective January 1, 2007, the provisions of this section shall apply to any cash register or other machine or device that electronically prints receipts for

credit card or debit card transactions that was in use prior to January 1, 2005.

West's Annotated Code of Virginia Currentness
Title 6.2. Financial Institutions and Services (Refs & Annos)
Subtitle I. General Provisions
Chapter 4. Certain Lending Practices
Article3. Credit Cards (Refs & Annos)

§ 6.2-429. Improper use of payment device numbers

A. No person that accepts payment devices for any purpose shall print on any receipt provided to the holder of the payment device (i) more than the last four digits of the payment device number or (ii) the expiration date.

B. For transactions in which the sole means of recording the person's payment device number is by handwriting or by an imprint or copy of the payment device, no receipt, other than the one original, shall display the information prohibited in subsection A. Returning all copies, including carbons, that do not comply with this section, to the payment device holder or authorized user or destroying such copies and carbons in front of the payment device holder or authorized user shall constitute compliance with this section.

C. The provisions of this section shall apply to all cash registers or other machines or devices that electronically print receipts for payment device transactions that are placed in service on or after July 1, 2003.

D. For all cash registers or other machines or devices that electronically print receipts for payment device

transactions in service prior to July 1, 2003, the provisions of this subsection shall not apply until July 1, 2005.

E. Any person violating this section (i) shall be liable to the payment device holder and the issuer for any damages or expenses, or both, including attorney fees, that the payment device holder incurs due to the use of the payment device without the permission of the payment device holder and (ii) may be compelled, in a proceeding instituted in any appropriate court by the attorney for the Commonwealth, to comply with this section by injunction, mandamus, or other appropriate remedy. Without limiting the remedies authorized by this section in a proceeding instituted by the attorney for the Commonwealth, any person failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section, shall be subject, in the discretion of the court, to a civil penalty not to exceed $1,000 for each violation.

West's Revised Code of Washington Annotated Currentness

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.200. Automated Financial Transactions

19.200.010. Findings--Intent--Restrictions on credit and debit card receipts--Application--Definitions

(1) The legislature finds that credit and debit cards are important tools for consumers in today's economy. The legislature also finds that unscrupulous persons often fraudulently use the card accounts of others by stealing the card itself or by obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's account. The legislature intends to provide some protection for consumers from the latter by limiting the information that can appear on a card receipt.

(2) No person that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the card account number or print the card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the card number is by handwriting or by an imprint or copy of the credit or debit card.

(4) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit.

Supreme Court, U.S.
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No. 10-640

IN THE
Supreme Court of the United States

EDUARD SHLAHTICHMAN,
Petitioner,

v.

1-800 CONTACTS, INC.,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

LAWRENCE S. SCHANER
Counsel of Record
JAMES L. THOMPSON
WILLIAM E. PARKER
CHELSEA L. WARREN
JENNER & BLOCK LLP
353 North Clark Street
Chicago, Illinois 60654-3456
(312) 222-9350
lschaner@jenner.com

Counsel for Respondent

QUESTION PRESENTED

1. Whether certiorari should be granted to review the Seventh Circuit's ruling that the provisions of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. § 1681c(g), that prohibit the "printing" of more than the last five digits of a credit card number or the card's expiration date on electronic receipts provided at "the point of the sale or transaction," do not apply to confirmations of internet transactions sent by e-mail from online retailers to customers.

RULE 29.6 STATEMENT

Respondent 1-800 CONTACTS, Inc. has no parent corporations, and no publicly held company owns ten percent or more of its stock.

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No. 10-640

IN THE
Supreme Court of the United States

EDUARD SHLAHTICHMAN,
Petitioner,

v.

1-800 CONTACTS, INC.,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

In affirming the district court's order granting Respondent's motion to dismiss, the United States Court of Appeals for the Seventh Circuit became the first appellate court to consider whether e-mail confirmations of internet transactions are printed "receipts" governed by the receipt truncation provisions of the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), 15 U.S.C. § 1681c(g). The Seventh Circuit's reasoned and well-supported decision, like the district court's opinion, adopted the interpretation that has been applied by a clear and growing majority of district courts. The

Seventh Circuit ruled that e-mail confirmations are not printed receipts provided at the point of sale, and thus are not regulated by FACTA.

There is no circuit split on this issue (nor is there likely to be one), and the Seventh Circuit's decision was correct, involving the straightforward application of a plainly-worded statute. Moreover, the only argument Petitioner advances before this Court -- that a failure to reverse the Seventh Circuit will result in state courts being buried beneath an avalanche of litigation based on a "[c]haotic [h]odgepodge of [s]tate [l]aw" (Pet. for a Writ of Cert. ("Pet.") at 5) -- is purely hypothetical. There has been no flood of state court litigation in states where district courts have rejected Petitioner's construction of FACTA. Furthermore, Petitioner did not raise his argument in the district court, and has thus waived it. Petitioner has failed to raise a single creditable reason for this Court to review this case, and the petition should be denied.

JURISDICTION

This Court has jurisdiction to review the petition under 28 U.S.C. § 2101(c) and Supreme Court Rule 13, because the petition was filed within ninety days after the entry of the judgment of the United States Circuit Court of Appeals for the Seventh Circuit.

STATUTORY PROVISIONS INVOLVED

The only statutory provisions implicated by the petition are: 15 U.S.C. § 1681c(g), requiring the truncation of credit card numbers and expiration dates from electronically printed receipts provided to customers at the point of a sale or transaction; and 15 U.S.C. § 1681(n), providing for statutory damages in the case of willful violations of the Fair Credit Reporting Act ("FCRA"), including Section 1681c(g).

STATEMENT OF THE CASE

This dispute arises from the transmission of an e-mail confirmation of an online transaction. That e-mail confirmation, sent from Respondent 1-800 CONTACTS to Petitioner Edward Shlahtichman, included the expiration date of Petitioner's credit card. Petitioner's complaint asserted that the e-mail confirmation was a "computer-generated receipt" upon which Respondent had "electronically printed" the expiration date from Petitioner's credit card, in allegedly willful violation of FACTA's receipt truncation provisions.

The instant petition seeks to challenge the Seventh Circuit's decision affirming the district court by concluding that the statutory term "electronically printed" does not encompass e-mail confirmations (Pet. App. at 10a) and that FACTA's use of the phrase "at the point of the sale or transaction" indicates that Congress intended to regulate only face-to-face transactions taking place in brick-and-

mortar store locations. (*Id.* at 10a-13a.) The Seventh Circuit further held that, even if it had construed FACTA too narrowly, dismissal nevertheless would be required because 1-800 CONTACTS' plausible construction of FACTA cannot have amounted to a willful violation of FCRA, according to the framework established by this Court in *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 69-70 & n. 20 (2007). (Pet. App. at 17a-18a.)

1. Background Facts.

Respondent 1-800 CONTACTS is a Utah-based corporation engaged in the business of selling contact lenses and related items over the internet. (Doc. 1-1 p. 6 ¶ 16.)[1] Petitioner Shlahtichman placed an internet order with 1-800 CONTACTS on June 2, 2009. (*Id.* ¶ 18.) On that same day, 1-800 CONTACTS sent Shlahtichman an e-mail confirmation of the transaction. (*Id.*) The e-mail confirmation displayed the expiration date of the credit card Petitioner had used to make the purchase. (*Id.*) Petitioner filed suit under FACTA, alleging that inclusion of the card's expiration date on the e-mail confirmation violated FACTA's receipt truncation requirements. (*Id.* ¶ 28.) Petitioner did not claim any actual damages, but alleged that Respondent's conduct constituted a "willful" violation of FACTA, entitling him to statutory damages under 15 U.S.C. § 1681(n). (*Id.* ¶ 10.)

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[1] Citations to "Doc. ___" refer to items in the electronic record Petitioner filed with the Seventh Circuit.

2. Proceedings Below.

In the district court, Respondent moved to dismiss under Fed. R. Civ. P. 12(b)(6). Respondent argued that, under the plain meaning of FACTA, the e-mail confirmation provided to Petitioner was neither an "electronically printed" receipt nor a receipt provided at the "point of the sale." Respondent also argued that, even if its interpretation was rejected, that interpretation was sufficiently plausible to make it impossible for any violation to have been willful. (Doc. 17.) In response, Petitioner did not make any policy-based arguments, and nowhere discussed federal law preemption of state law receipt truncation standards. Rather, Petitioner simply argued that the statutory language is broad enough to encompass e-mail confirmations sent to purchasers over the internet, and that willfulness is a fact question unable to be resolved on a motion to dismiss. (Doc. 21.) The district court granted Respondent's motion to dismiss, accepting its arguments as to the interpretation of FACTA but not reaching the willfulness issue. (Pet. App. at 24a-31a.)

The Seventh Circuit, in a unanimous opinion by Judge Rovner, affirmed the district court's decision. The Seventh Circuit agreed that FACTA does not apply to e-mail confirmations because they are not "printed" (*Id.* at 81-10a), and because such electronic confirmations are not provided "at the point of the sale or transaction." (*Id.* at 10a-13a.) Unlike the district court, however, the Seventh Circuit also addressed the willfulness issue, adding

that any violation could not possibly have been willful because Respondent's interpretation of the statute was reasonable. (Pet. App. at 17a-18a.) In briefing on appeal, Petitioner argued for the first time that FCRA's "preemption provisions" compel a conclusion that FACTA's truncation requirements apply to e-mail transactions, so as to prevent application of inconsistent state laws. The Seventh Circuit rejected that argument, noting that "Shlahtichman forfeited this argument by failing to make it in the district court." (*Id.* at 17a.) This preemption-based argument is the only argument Petitioner raises in his petition to this Court.

REASONS FOR DENYING THE PETITION

Shlahtichman's petition meets none of the three conditions laid out in this Court's Rule 10, "Conditions Governing Review on Writ of Certiorari." This is an appeal of a decision of a federal court of appeals, where no contrary decision from another court of appeals or a state court of last resort exists. Petitioner has not claimed (and cannot reasonably claim) that the Seventh Circuit "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10(a).

Under these circumstances, the only plausible justification for review by this Court is a finding that the Seventh Circuit "has decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c).

Shlahtichman's petition falls well short of establishing that such an important question exists. Section 1681c(g) of FACTA establishes straightforward statutory requirements, and the district and circuit courts correctly interpreted those requirements. Moreover, the only ground on which Petitioner bases his request for review -- a fear that the Seventh Circuit's ruling will lead to an avalanche of inconsistent state litigation -- is hypothetical and unfounded, and has not been preserved. For these reasons, the petition should be denied.

I. There Is No Circuit Split On This Issue.

As the petition correctly notes (*see* Pet. at 10), the Seventh Circuit's decision below was the first decision by a federal court of appeals to consider the FACTA truncation requirements' applicability to e-mail confirmations of internet transactions. The case thus involves the construction and application of a federal statute. If the federal courts of appeal were construing this statute differently, providing conflicting guidance to district courts and litigants, there might be a compelling reason for this Court to review the issue. *See* Sup. Ct. R. 10(a). That is not the case here.

Moreover, such a circuit split is unlikely ever to arise over the construction of FACTA. Although a minority of district court judges have held that FACTA's truncation requirements may apply to

internet transactions,[2] a clear majority of cases to consider the question have rejected that interpretation and reached the same result as the Seventh Circuit. These courts have ruled that the plain meanings of "print" and "point of sale" demonstrate that Congress did not intend for FACTA's truncation requirements to apply to e-mail confirmations.[3] In addition, federal courts are becoming increasingly uniform in their rejection of Petitioner's construction. As reflected in footnotes 1 and 2, Respondent is aware of only one district court case since March 2008 to have accepted Petitioner's position, while in that same time period, at least ten district court judges have adopted the interpretation accepted by the Seventh Circuit. The clear trend

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[2] *See Romano v. Active Network Inc.*, No. 09 C 1905, 2009 WL 2916838 (N.D. Ill. Sept. 3, 2009); *Harris v. Best Buy Co., Inc.*, 254 F.R.D. 82 (N.D. Ill. Mar. 20, 2008); *Grabein v. 1-800-Flowers.com, Inc.*, No. 07-22235-CIV, 2008 WL 343179 (S.D. Fla. Jan 29, 2008); *Vasquez-Torres v. Stubhub, Inc.*, No. CV 07-1328, 2007 U.S. Dist. LEXIS 63719 (C.D. Cal. July 2, 2007).

[3] *See Simonoff v. Kaplan, Inc.*, No. 10 Civ. 2923, 2010 WL 4823597 (S.D.N.Y. Nov. 29, 2010); *Holt v. LivInn Suites, Inc.*, No. 10-383, slip op. (D. Minn. May 21, 2010); *Holzman v. Shoes.com, Inc.*, No. 10-cv-1145, slip op. (N.D. Ill. Apr. 6, 2010); *Turner v. Ticket Animal, LLC*, No. 08-61038-CIV, 2009 WL 1035241 (S.D. Fla. Apr. 16, 2009); *Smith v. Zazzle.com, Inc.*, 589 F. Supp. 2d 1345 (S.D. Fla. 2008); *Smith v. Under Armour, Inc.*, 593 F. Supp. 2d 1281 (S.D. Fla. 2008); *Grabein v. Jupiterimages Corp.*, No. 07-22288-CIV, 2008 WL 2704451 (S.D. Fla. Jul. 7, 2008); *King v. Movietickets.com, Inc.*, 555 F. Supp. 2d 1339 (S.D. Fla. 2008); *Haslam v. Federated Dept. Stores, Inc.*, No. 07-61871 CIV, 2008 WL 5574762 (S.D. Fla. May 16, 2008); *Narson v. GoDaddy.com, Inc.*, No. CV-08-0177, 2008 WL 2790211 (D. Ariz. May 5, 2008).

among district courts is to apply the common-sense, plain meanings of "print" and "point of sale" that were applied by both courts below. It is unlikely that there will *ever* be a circuit conflict surrounding Section 1681c(g), and no such controversy exists at this time.

II. By Its Plain Terms, Section 1681c(g) Does Not Apply To E-Mail Confirmations Of Internet Transactions.

This Court also should deny the petition because the district and circuit courts' interpretation of the relevant statutory provisions was correct. Section 1681c(g) is a clear statute that employs common words with accepted, well-understood meanings. If a court applies the plain meaning of FACTA's statutory language, the only plausible conclusion is that Congress did not intend FACTA to extend to e-mail confirmations of internet transactions.

When construing a statute, "the beginning point must be the language of the statute." *Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). If the statute does not expressly define a word or term, courts presume that Congress intended the word's ordinary meaning. *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Courts must consider the ordinary meaning of words "in the context of the statutory scheme in which they appear." *Pace v. DiGuglielmo*, 544 U.S. 408, 420 (2005).

Application of these principles to FACTA's receipt truncation provisions supports the interpretation adopted by the district court and the Seventh Circuit in this matter. First, the statute applies only to receipts that are "printed," and uses a variation of the word "print" four times in Section 1681c(g)'s three subsections. 15 U.S.C. § 1681c(g). The plain and ordinary meaning of the word "print" is to transfer images or information to paper or some other tangible medium. Every dictionary Respondent could locate includes some derivation of this basic description as a primary definition of the term "print."[4] Had Congress intended FACTA's truncation provisions to apply to "receipts" that were transmitted by e-mail and displayed on a computer screen, but never transferred to paper, Congress would have so stated. Congress would not have presumed that references to "printed" receipts would be construed so as to include e-mails.

Second, the statute applies only to "receipt[s] provided to the cardholder at the point of the sale or transaction." 15 U.S.C. § 1681c(g)(1). The term

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[4] *See, e.g.*, The Cambridge Advanced Learner's Dictionary, *available at* http://dictionary.cambridge.org (search "print," then select "print *verb* TEXT") (last accessed Dec. 5, 2010) (defining "print" as "to produce writing or images on paper or other material with a machine."); Oxford English Dictionary, *available at* http://dictionary.oed.com (search "print," then select "print, *v.*") (last accessed Dec. 5, 2010) (defining "print" as "[t]o make or produce (text, a book, a picture, etc.) by a mechanical process involving the transfer of characters or designs on to paper, vellum, etc., esp. from inked blocks, types, or plates.").

"point of sale" most commonly refers to a physical location.[5] When a customer receives an e-mail confirmation from an internet transaction, the customer does not receive a receipt "at the point of the sale or transaction"; in fact, there *is* no physical point of sale.

The e-mail sent to Petitioner was not "printed" by Respondent, and was not provided to Petitioner at the "point of sale." Accordingly, the decision below was correct, and there simply is not a close question of statutory construction requiring further clarification by this Court. The petition should be denied.

III. Petitioner's Fears That Online Retailers Will Be Subjected To Inconsistent State Laws Are Completely Hypothetical.

The only argument Petitioner advances in support of certiorari is purely hypothetical and does not warrant a review of the Seventh Circuit's decision. Petitioner argues that unless FACTA is construed to apply to e-mail confirmations of internet transactions, online retailers will be subjected to a flood of litigation under varying state laws that establish a host of inconsistent receipt truncation

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[5] *See* The Oxford English Dictionary, *available at* http://dictionary.oed.com (search "point of sale") (last accessed Dec. 5, 2010) (defining "point of sale" as "a place where retail transactions are made, esp. a retail shop; also attrib. (as point-of-sale). Now used esp. of a location at which a retail transaction is recorded electronically.").

requirements. (Pet. at 8.) Petitioner claims this "absurd result" would be at odds with Congress' desire to provide uniform national standards, as reflected in FCRA's preemption provision, 15 U.S.C. § 1681t(b). (Pet. at 8.)

This fear that the Seventh Circuit's ruling will "cause havoc with internet commerce" (Pet. at 2) is purely conjectural. Petitioner simply imagines that retailers will be subject to a maze of inconsistent state statutes. In reality, none of the pre-FACTA state statutes cited by Petitioner expressly apply to e-mailed receipts. In fact, the vast majority of statutes employ language that is very similar to FACTA, expressly prohibiting only "print[ing]" more than the last five digits of the credit card number on "electronically printed" receipts.[6] Not even the post-FACTA statutes expressly apply to online retail transactions. The Illinois statute that Petitioner highlights, for example, is silent as to e-mailed confirmations of sale. 815 Ill. Comp. Stat. 505/2NN (2009).

Further, to date, no court has applied any of the cited state laws to receipts transmitted through e-mail. Indeed, although there is now a growing

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[6] *See* Cal. Civ. Code § 1747.09 (West 2010); Wash. Rev. Code § 19.200.010 (2009); Colo. Rev. Stat. § 6-1-711 (2009); Fla. Stat. § 501.0118 (2009); Nev. Rev. Stat. § 597.945 (2009); Kan. Stat. Ann. § 50-669b (2009); Neb. Rev. Stat. § 28-633 (2009); N.Y. Gen. Bus. Law § 520-a(4-a) (McKinney 2009); Okla. Stat. tit 15, § 752A (2010); N.C. Gen. Stat. § 14-113.24 (2009); Del. Code Ann. tit. 11, § 915A (2009); Ga. Code Ann. § 10-15-3 (2009).

number of cases in which federal courts have dismissed FACTA claims brought by recipients of e-mail confirmations, it does not appear that any of those litigants, barred from federal court, have asserted their claims under state statutes. Petitioner cites no such cases, and Respondent could not locate any. Indeed, the only cases even hinting at the possibility of such state law actions are the instant case and another FACTA lawsuit brought by Petitioner's attorneys. *Holt v. LivInn Suites, Inc.*, No. 10-0383 (D. Minn. May. 21, 2010). In that case, the district court rejected the argument Petitioner now makes that the risk of conflicting state laws warrants a finding that FACTA applies to e-mail transactions. *Id.* at *9. There is no support for Petitioner's hypothetical fear that online retailers will be subject to conflicting state laws, and certainly nothing to warrant a departure from the plain language of the statute.

IV. Petitioner Waived His Arguments By Failing To Present Them Below.

Even if Petitioner's preemption argument had merit, which it does not, Petitioner has waived his right to raise that argument by failing to present it to the district court.

This Court has long stated that it will not address arguments that a party failed to raise below. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 55 n. 4 (2002) ("Brunswick has asserted that federal maritime law governs this case. Because this argument was not raised below, it is waived.");

United States v. Alvarez-Sanchez, 511 U.S. 350, 360 n. 4 (1994) ("Finding no exceptional circumstances that would warrant reviewing a claim that was waived below, we adhere to our general practice and decline to address respondent's Fourth Amendment argument."); *Blair v. Osterlein Mach. Co.*, 275 U.S. 220, 225 (1927) ("This court sits as a court of review. It is only in exceptional cases . . . that questions not pressed or passed upon below are considered here.").

The only argument Petitioner advances before this Court -- that the purpose behind FCRA's preemption provision would best be furthered by applying FACTA's truncation requirements to e-mail receipts -- was not preserved below. (Pet. at 8.) Petitioner never raised that argument before the district court; his only argument there was that the "plain meaning" of "print" includes e-mail transmissions displayed on a customer's computer. *Shlahtichman v. 1-800 Contacts*, No. 09-4032, slip op. (N.D. Ill. Dec. 2, 2009) (Doc. 21 at 1, 4.) Not until his appeal to the Seventh Circuit did Petitioner advance his current preemption argument. Brief of Plaintiff-Appellant Eduard Shlahtichman, *Shlahtichman v. 1-800 Contacts, Inc.*, 615 F.3d 794 (7th Cir. 2010).

In its appellate briefs to the Seventh Circuit, Respondent argued that Petitioner waived his state court preemption argument by not presenting it to the district court. The Seventh Circuit agreed:

> Petitioner makes a belated argument that construing the truncation

> provision not to apply to e-mail receipts is inconsistent with the FCRA's preemption provision . . . [b]ut Petitioner forfeited this argument by failing to make it in the district court, and this is not one of the rare civil cases in which we might overlook the forfeiture.

(Pet. App. at 17a (citations omitted).) Petitioner now ignores the Seventh Circuit's determination, and raises the same preemption argument before this Court without explaining how the Seventh Circuit erred in finding that argument to have been waived. Petitioner waived his preemption argument by failing even to cite FCRA's preemption provision before the district court. Because preemption is the only basis Plaintiff offers for reviewing the Seventh Circuit's decision, this Court should deny the petition.

CONCLUSION

The petition should be denied.

Respectfully submitted,

LAWRENCE S. SCHANER
Counsel of Record
JAMES L. THOMPSON
WILLIAM E. PARKER
CHELSEA L. WARREN
JENNER & BLOCK LLP
353 North Clark Street
Chicago, Illinois 60654-3456
(312) 222-9350
lschaner@jenner.com

Counsel for Respondent